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at 3 p.m.
New York

SUMMARY RECORD OF THE 16th MEETING

Chairman: Mr. VAN DE VELDE (Vice-Chairman) (Netherlands)

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In the absence of the Chairman, Mr. Van de Velde (Netherlands),
Vice-Chairman, took the Chair.

The meeting was called to order at 3.20 p.m.

AGENDA ITEM 144: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/45/33)

AGENDA ITEM 139: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued) (A/45/436 and Add.1, A/45/522-S/21795, A/45/527-S/21801, A/45/597, A/45/598-S/21854, A/45/600-S/21857; A/C.6/45/L.1)

1. Mr. DEREYMAEKER (Belgium) said that in the domain of international peace and security, a system of collective security represented the sole means of effectively countering all threats to peace and all acts of aggression. Such a system lay at the heart of the United Nations Charter with the provisions of Chapter VII constituting the keystone. While differences of opinion, disputes and controversies would inevitably arise in human society, it was unacceptable not to attempt to settle them by peaceful means and instead to resort to force to annex a sovereign State recognized by all nations, as had recently occurred. Belgium, supported by its regional group, had in 1990 put forward its candidacy for a seat on the Security Council and would do its utmost to help the Organization to assume the responsibilities conferred upon it by the Charter.

2. His delegation welcomed the interest shown by all delegations in the proposals on fact-finding submitted by various delegations in the two working papers, which, after revision, had been considered together and merged into a single text, taking account of comments made during the debate. He trusted that the Committee would adopt the consolidated document (A/AC.182/L.66) in its final form and submit it to the General Assembly at its forty-sixth session. Most delegations had adopted a positive attitude *vis-à-vis* the ideas contained in the consolidated document and had made constructive proposals designed to improve its text. Nevertheless, his delegation wished to make further comments in response to the legitimate concerns which remained.

3. There was no doubt that, gathered in good time, information provided by fact-finding missions should enable United Nations organs and the Secretary-General to take decisions more effectively and more quickly. The document thus went some way towards filling a vacuum. It would be appropriate to respond to the desire expressed by the Secretary-General in his annual report on the work of the Organization (A/45/1) by considering afresh ways of enabling him to monitor potential conflict situations from an impartial standpoint.

4. The question of the prior consent of the receiving State to the sending of a fact-finding mission to its territory was also worthy of particular attention. In legal terms, it was the corollary of the sovereign equality of States. The sponsors of the consolidated document (A/AC.182/L.66) had taken account of that

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requirement (para. 13) without prejudice, however, to the obligation assumed under Article 25 of the Charter. His delegation was of the view that Member States, in the exercise of that sovereignty, could, subject to specific exceptions, undertake to admit fact-finding missions to their territory. Document A/AC.182/L.66 provided, in paragraph 12, that the mission report should be limited to a statement of facts. The report would thus be devoid of any subjective elements or value judgements, and there could therefore be no threat of interference in the internal affairs of States. By way of example, the undertaking freely entered into by the super-Powers to accept foreign inspectors on their territory to monitor the dismantling of missile systems had contributed to the establishment of the climate of confidence which had ended the cold war. The document, in several paragraphs, stressed the impartiality of missions, and a systematic or arbitrary refusal to receive them would indicate excessive distrust of the Organization.

5. Lastly, some representatives had considered that the proposed text, in particular paragraph 9, fell short of the obligation of Member States to refer disputes to the Security Council in accordance with Articles 35 and 37 of the Charter. In the view of his delegation, paragraph 9 of the document, in common with Article 35 of the Charter, offered any Member State the possibility of bringing a dispute or a situation likely to endanger international peace and security to the attention of the Security Council or the General Assembly. Under Article 37 of the Charter, only parties to a dispute were obliged to refer it to the Security Council. It was thus clear that paragraph 9 of the text was not at variance with the Charter, but followed its logic.

6. His delegation welcomed the agreement on the rationalization of the Organization's existing procedures reached by the Special Committee. Belgium would have wished for greater clarity in indicating the normative scope of various elements, but thought that the document adopted should allow the Organization's resources to be utilized more rationally.

7. The question of the peaceful settlement of disputes should not be considered as a separate item in the context of both the report of the Special Committee and the United Nations Decade of International Law. It would be preferable for the Sixth Committee not to deal with it as a separate item of its agenda, while providing for the Special Committee to continue to review certain aspects. With regard to the future work of the Special Committee, care should be taken to ensure that it was compatible with the special and irreplaceable role which the Special Committee would be increasingly called on to play in view of developments in the international climate.

8. Lastly, the handbook on the peaceful settlement of disputes between States, prepared by the Secretariat, would be very valuable in assisting States to settle their disputes by peaceful means. His delegation thus welcomed its completion, scheduled for the 1991 session of the Special Committee.

9. Mr. MONTES DE OCA (Mexico) said that there was a close link between the maintenance of international peace and security and item 76, "Comprehensive review

(Mr. Montes de Oca, Mexico)

of the whole question of peace-keeping operations in all their aspects", considered by the Special Political Committee. Some States wished to enlarge the scope of fact-finding missions to include maritime operations, terrorism, drug trafficking and nuclear and environmental matters. At the forty-fourth session of the General Assembly, the Permanent Representative of Mexico had called for caution in order to avoid overstretching the Organization's political and financial resources as well as its involvement in acts which could endanger the sovereign rights of States. The concept of the sovereign equality of States determined the limits of fact-finding activities, and his delegation therefore supported the strengthening of that vital concept of international law. In the draft document on fact-finding missions, the simple mention of the prior consent of States was not enough.

10. With regard to the participation of representatives of receiving States and States involved in fact-finding missions, his delegation understood that some States might choose not to take part in those activities and leave them entirely to the Organization. It was inadvisable to consider that option as the general norm. Any exception to the rule of the prior and expressed consent of the receiving State must be carefully considered. Such an approach would be incompatible with the suggestion that a State should accept the sending of a mission if it had not replied within a specific time-frame, or that a State which refused authorization should be obliged to justify its refusal.

11. Among the criteria which should govern fact-finding missions it would be desirable to include the principle of complete impartiality during the entire process. Members of the Security Council could help to guarantee that impartiality by abstaining from taking part in missions relating to conflicts to which they were parties, in accordance with Article 27, paragraph 3 of the Charter. It would also be advisable to introduce the criterion of timeliness, with the choice of the moment not ruling out the possibility of resorting to the Peace Observation Commission.

12. His delegation was firmly opposed to the use of the term "residual" to describe the role of the General Assembly in the field of the maintenance of international peace and security. In fact, the Assembly played a vital role given its ability to function when the Security Council was paralysed and to act with the authority that derived from its more representative nature.

13. It was important to note that document A/AC.182/L.66 hardly began to define the precise nature of fact-finding activities. Once the concept had been defined, it would first be necessary to review all the comments made in that connection and then to ask the Secretary-General to provide an up-to-date study, taking into account the views communicated to him by States, as had been done in the case of the peaceful settlement of disputes.

14. Regarding the peaceful settlement of disputes between States, in reply to the Secretary-General's questionnaire on the United Nations Decade for International Law, Mexico had endorsed many of the comments made by States regarding the negotiation and adoption of a general convention on means of preventing and

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(Mr. Montes de Oca, Mexico)

settling disputes. In its view, the question should be made part of the programme of action for the Decade, under the heading of the progressive development of international law. Mexico also wished to reaffirm its support for the fund to be set up by the Secretary-General to assist States to settle their disputes by bringing them before the International Court of Justice.

15. In his delegation's view, the handbook on the peaceful settlement of disputes would be a useful tool for all those interested both in international law and international relations. It was pleased to learn that the handbook was expected to be completed before the 1991 session of the Special Committee.

16. In his annual report on the work of the Organization (A/45/1), the Secretary-General expressed the view that his means of settling international crises peacefully would be considerably enhanced if he was authorized to request advisory opinions from the International Court of Justice. That suggestion called for certain reservations since not only would it require an amendment to the Charter but it would also seem to cast doubt on the Assembly's diligence and to endanger the balance of functions between the organs of the United Nations.

17. Mexico maintained its reservations regarding the document on the rationalization of existing United Nations procedures currently under consideration. The subject was already dealt with in annex V, paragraph 3, of the General Assembly's rules of procedure. Apart from the fact that the new document was thus a duplication, his delegation believed that it was necessary not to lose sight of the weaknesses of the consensus method, the short- and long-term consequences of which needed to be studied in depth. In point of fact, many delegations regarded the problem as essentially political and it must be admitted that so far very little research had been undertaken on consensus. As far as the possible binding force of consensus was concerned, it was not appropriate for the Sixth Committee to recommend the use of legal or political mechanisms which it had not yet defined. It would be advisable for the co-sponsors of the document to submit a convincing study on consensus before insisting on their conclusion.

18. Mr. BUSHATI (Albania) said that strengthening the role of the United Nations was a common objective for all Member States as being the most suitable means of democratizing international relations and of guaranteeing peace and security. His delegation wished to reiterate its commitment to the Charter, which would, if correctly applied, guarantee the future of mankind.

19. In spite of the steps taken to ease tension and solve many regional conflicts, which had created an atmosphere that gave rise to hope for the whole of mankind, the occupation of Kuwait by Iraq and the recent killing of Palestinians in the occupied Arab territories threatened regional and world peace and hampered the positive processes currently under way. His delegation supported the measures taken by the United Nations to condemn such policies. Being convinced that the peaceful settlement of disputes between States must be seen in a broader context, it stressed the primary importance of preventive diplomacy. States must spare no effort to solve their conflicts through negotiation, and those efforts must be

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(Mr. Bushati, Albania)

supported by the United Nations, with respect for the mutual interests of the parties involved. The United Nations had proved its usefulness on many occasions by making it possible to find a satisfactory solution. It was Albania's wish to live in peace with all other States, especially those in the Balkan region.

20. Mr. SANDOVAL (Ecuador) said that his delegation found the working paper A/AC.182/L.66 (A/45/33, para. 68), on fact-finding by the United Nations, particularly interesting. It was glad that paragraph 13 clearly recognized that States had the power to accept or reject a fact-finding mission on their territory; however, the reference to Article 25 of the Charter should perhaps be replaced by a general reference. The paragraph was a clear improvement over the previous versions, particularly that in which the absence of a reply to a request for the sending of a fact-finding mission was taken as an acceptance. Such a provision would have impaired the sovereignty of States.

21. Regarding paragraph 1 of document A/AC.182/L.67 (A/45/33, para. 56) on the rationalization of existing United Nations procedures, his delegation wished to stress once again that the reference to the adoption by the General Assembly, without a vote, of agreed texts must not in any way impair the right of States to vote on resolutions, since voting was the expression of the basic principle of the sovereign equality of States and guaranteed respect for the wishes of the majority of Member States of the Organization. All General Assembly resolutions had the same value regardless of their mode of adoption. His delegation suggested that the Sixth Committee should request that the document be distributed to all States to serve as a directive in the adoption of General Assembly resolutions.

22. The Ecuadorian Government attached overriding importance to the peaceful settlement of disputes and followed in its foreign policy the prescriptions of the Manila Declaration on the Peaceful Settlement of International Disputes (General Assembly resolution 37/10, annex). It also complied with all the provisions of the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations (General Assembly resolution 42/22, annex). His delegation was glad to hear of the progress that had been made in preparing the draft handbook on the peaceful settlement of disputes between States.

23. Since the structure of the United Nations organs ought to be adapted to conditions in the present-day world, the Special Committee should give serious consideration to the ideas that had been put forward in connection with a possible revision of the Charter, some articles of which were already out of date while others needed amendment. It would nevertheless be necessary to proceed with the utmost care in order to prevent good intentions from ending in results opposite to the aim in view.

24. Mr. SENE (Senegal) said that the importance assigned by the Special Committee at its latest sessions to the question of United Nations fact-finding activities in the field of maintenance of international peace and security was amply justified, given the role a fact-finding mission could play in seeking a political solution to

(Mr. Sene, Senegal)

a dispute between States. In practice, objective fact-finding had always played a major role in General Assembly and Security Council deliberations. It was also a constant concern of the Secretary-General who, in his report on the work of the Organization (A/45/1, p. 14) had stressed that the means currently at his disposal for gathering timely, accurate and unbiased information necessary for averting conflict, were inadequate. The submission at the 1990 Special Committee session of a single document (A/AC.183/L.66; A/45/33, para. 68) based on proposals previously introduced by six western delegations and two eastern European delegations was a decisive step in the examination of that question. That document, with a few improvements, could be submitted for adoption to the General Assembly in the near future.

25. His delegation welcomed in particular the wording of paragraph 13, which required prior consent of the State to which a fact-finding mission should be sent. That was simply a reflection of United Nations practice in that area, which was justified, since the co-operation of the receiving State was essential to the success of a mission. The State concerned must be given a reasonable amount of time in which to respond to the request to send a mission, thus avoiding the mistrust which paragraphs 15 and 16 might cause. The imprecise legal status of the unilateral declaration of acceptance of fact-finding missions provided for in paragraphs 18 and 19 deserved more thought. While it believed that the non-exhaustive list appearing in paragraph 22 of the facilities that the receiving State must grant answered legitimate concerns, his delegation believed that, for practical reasons, that list should be decided in close consultation with the State in question.

26. It noted with satisfaction the progress made by the Secretariat in the drafting of a handbook on the peaceful settlement of disputes between States. The work on that draft, along with all work on the general topic of the peaceful settlement of disputes was of growing importance, considering the proposal to draft a convention on the peaceful settlement of disputes within the framework of the United Nations Decade for International Law.

27. Finally, he congratulated the Special Committee on having concluded its work on the rationalization of existing United Nations procedures by adopting a document reflecting some progress in that area.

28. The Special Committee should take advantage of the climate of détente favouring greater co-operation between States brought about by the unprecedented events marking the end of the 1980s to pursue its work in the areas of particular interest for the maintenance of international peace and security. In that regard, his delegation found particularly interesting the ideas contained in the report of the Secretary-General on the work of the Organization (A/45/1) as well as those in the working paper submitted by the delegation of the Soviet Union (A/AC.182/L.65; A/45/33, para. 14).

29. The relationship between the United Nations and regional organizations in the area of peacekeeping and international security should be a relationship of

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(Mr. Sene, Senegal)

co-operation. As the Secretary-General had noted, "the diffusion of tensions between States and the pacific settlement of local disputes are, in many cases, matters appropriate for regional action" (A/45/1, p. 17). Because of their breadth and their international repercussions, however, some conflicts of a regional nature should be brought before the global Organization.

30. The adoption of the Declaration on the Prevention and Removal of Disputes and Situations which May Threaten International Peace and Security and on the Role of the United Nations in this Field (General Assembly resolution 43/51, annex) represented definite progress in preventive diplomacy at the United Nations. Much remained to be done, however. Page 14 of the report of the Secretary-General on the work of the Organization as well as working paper A/AC.182/L.65 submitted by the Soviet Union included interesting proposals on that subject, such as periodic meetings of the Security Council, establishing a United Nations presence in unstable areas, and eventually, institution of subsidiary bodies. The Security Council, in particular, should show greater innovation in conflict prevention. It should strengthen its informal procedures, which had already proven very effective. Regional organizations, which were in the best position to know the circumstances surrounding incidents of local tension, could also play an important role.

31. His delegation favoured the suggestion that the Secretary-General should be empowered to request an advisory opinion from the International Court of Justice, already granted under Article 96 of the Charter to the General Assembly and the Security Council. The primacy of law would gain through the strengthening of the role of the Court in settlement of disputes. It was important not only to extend its obligatory jurisdiction, but also to develop recourse to its advisory opinions.

32. Mr. ALARCON de QUESADA (Cuba) said that the consideration of the report of the Special Committee (A/45/33) came at a time when the Gulf crisis ran the risk of degenerating into a global conflagration with unforeseeable consequences. Considering that non-interference in the domestic affairs of States, non-use of force in international relations, the peaceful settlement of disputes between States and respect for the independence, sovereignty and territorial integrity of all States were essential principles of the international order, Cuba supported the drawing up, by the Special Committee or any other group deemed appropriate, of a draft convention on the peaceful settlement of disputes between States.

33. In view of the importance of fact-finding for the maintenance of international peace and security, it was essential that the document currently under study on that question in the Special Committee be complete, which was not yet the case. In particular, a fact-finding mission must not be sent into the territory of a State without its consent, which must be expressly indicated in the document. The Special Committee must continue its work on the subject, giving due consideration to the opinions expressed during the debate in the Sixth Committee.

34. Much had been said recently about the tendency towards relaxation of international tensions and co-operation between Powers that just yesterday were

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(Mr. Alarcon de Quesada, Cuba)

antagonists. While it was appropriate to welcome such a positive change, nevertheless, care must be taken not to draw excessively optimistic conclusions too hastily. Countries should question the relationship between that new climate and the United Nations Charter as well as relations between the principal United Nations organs, in particular between the Security Council and the General Assembly. Regarding the Security Council, the Cuban delegation wished to emphasize that the common view among its permanent members, which had been discussed frequently of late, did not necessarily mean that there was a common view among all its members. The decisions of the Council should not be the expression only of the will of some of its members possessing particular powers. The powers held by Council members had been entrusted to them by the rest of the United Nations; hence, whether permanent or elected members, they had a political and moral obligation to all the Members of the Organization and should act in their name.

35. The Cuban delegation fully associated itself with the observations made by the representatives of Mexico and Ecuador on the recommendation concerning the quest for and taking of decisions by consensus. However, it wondered if the recommendation that the General Assembly should adopt decisions in that fashion might risk introducing indirectly, and perhaps unintentionally, a veto of sorts in a body in which all members were represented on an equal footing. On the other hand, it would be advisable for the decisions taken by the Security Council to be the result of a consensus among all its members, the five non-elected members and the ten members elected by the General Assembly which represented the necessary link between the Council and the membership of the Organization as a whole.

36. Mr. FUKUKAWA (Japan) said that in the new age of dialogue and co-operation, the Security Council had an increasingly important role to play in maintaining and restoring peace, as did the Secretary-General, who should engage in preventive diplomacy to lower the level of tension. Both must be given enhanced means of preventing conflicts and, in particular, the Council should be in a position to conduct fact-finding activities and dispatch observer missions. Such a system would constitute a particularly effective means of preventing the escalation of disputes.

37. His delegation stressed the ever-growing importance of strengthening the role of the United Nations and effectively implementing the provisions of the Charter. That could be done by using the forum provided by the Special Committee on the Charter. The Special Committee, which had just held a very fruitful session, had considered in particular a unified document (A/AC.182/L.66) concerning fact-finding activities. Consideration should now be given to the comments made on that subject in the Special Committee and in the Sixth Committee so that the Special Committee could adopt a final text at its next session and submit it to the General Assembly at its forty-sixth session.

38. Concerning the peaceful settlement of disputes between States, his delegation appreciated the efforts made by the Secretariat in producing a draft handbook; it was to be hoped that the handbook would be ready in definitive form for the next session of the Special Committee.

(Mr. Fukukawa, Japan)

39. With regard to the rationalization of existing procedures of the United Nations, Japan supported the adoption at the current session of the General Assembly of the draft document prepared by the Special Committee and submitted in its report (para. 85).

40. Lastly, being anxious to see all Member States taking part in United Nations activities on an equal footing, Japan hoped that other Member States would support the deletion from the Charter of the Articles relating to former "enemy States" (Art. 53, paras. 1 and 2, and Art. 107), for they were entirely inappropriate.

41. Mr. AUST (United Kingdom) said he was pleased that the general debate in the Special Committee on the Charter had been much shorter at the previous session, so that the Special Committee had been able to concentrate on concrete topics.

42. With regard to fact-finding, the unified document had made for very fruitful discussions and should serve as a good basis for the Special Committee's further work. However, his delegation did not see the point of a unilateral declaration in which a State would declare that it committed itself to admitting a fact-finding mission to its territory. The analogy that had been drawn with the declaration made under Article 36, paragraph 2, of the Statute of the International Court of Justice was inappropriate.

43. Concerning the rationalization of existing United Nations procedures, his delegation was gratified that the Special Committee had been able to complete the draft document for submission to the General Assembly for consideration and adoption.

44. Turning to the peaceful settlement of disputes, his delegation noted that the Secretariat intended to prepare an index to the handbook that was being completed. The handbook should be produced in loose-leaf form so that it could be updated to take account of the rapid pace of change.

45. His delegation supported the suggestion made by Romania that the Sixth Committee should no longer have a separate agenda item on the peaceful settlement of disputes between States, which was already being considered by the Special Committee and which would be a central part of the work of the Decade of International Law. His delegation also doubted whether there was really any need for a resolution on the subject and proposed that the Sixth Committee should adopt a simple decision recommending removal of the subject from its agenda. Traditionally, the main purpose of the resolution had been to follow up the Manila Declaration. But interest among States had waned: only five had replied to the Secretary-General, and there was a growing realization that the time had come to go far beyond the Declaration and devise more concrete methods for ensuring the peaceful settlement of disputes. However, even if the subject was to be given close attention during the Decade of International Law, that did not mean that the Special Committee would no longer consider it. The Sixth Committee should recommend that the Special Committee should be given the task of examining certain aspects of the subject.

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46. In the opinion of his delegation, any proposal, including the one contained in the report of the Secretary-General on the work of the Organization (A/45/1), to the effect that the Secretary-General should be authorized to request advisory opinions of the International Court of Justice, a procedure already open to the General Assembly, the Security Council and various United Nations bodies so authorized by the General Assembly, ran into two problems. First, his delegation wondered if it was advisable to authorize any one person to seek advisory opinions without the agreement of Member States. Furthermore, the Secretary-General had pointed out that that would add greatly to the means of peaceful solution of international crisis situations, given the complementary relationship between the Security Council and himself and the fact that most situations of international crisis required his good offices. But if the States involved in a dispute were themselves unwilling to submit the matter to the Court, was it right that the Secretary-General should do so on his own initiative? He also wondered whether it was proper for the International Court of Justice to give an advisory opinion regarding a dispute between States. The only precedent (concerning Western Sahara, in 1975) had occurred in rather special circumstances. That being said, the matter should be considered further to see whether there was scope for seeking advisory opinions more frequently and to consider the conditions under which they might be sought.

47. Members needed to reflect on the suggestions made by the Soviet Union and others on the future work of the Special Committee. However, it was slightly ironic that ideas on institutional changes were being put forward at a time when the United Nations was truly working as its founding fathers had intended. Suffice it to recall the action taken by the Organization in the Iran-Iraq conflict, Namibia, Nicaragua, Cambodia and Western Sahara and in response to the invasion of Kuwait.

48. Mr. DASTIS (Spain) said that the recommendations concerning existing United Nations procedures, submitted by the Special Committee to the General Assembly for consideration and adoption (A/45/33, para. 86), were a useful contribution to the rationalization of the General Assembly's work in that they sought to broaden the scope of the consensus procedure.

49. Referring to the unified document on fact-finding activities, of which Spain was a sponsor (A/AC.182/L.66), his delegation supported the proposals made with a view to improving its structure, style and form in order to make it clearer. As to the substance, Spain stressed the need to bear in mind the Special Committee's goal: to strengthen the role of the Organization. A first series of comments had cast doubt on the proposals aimed at strengthening the capacity of the Secretary-General to gather exact and objective information, particularly on site, so as to prevent conflicts. His delegation supported the Secretary-General's view that the means at his disposal in that area were quite insufficient. A second series of comments concerned the need to obtain the approval of the State concerned prior to sending a mission. That need was a real one, but States should be encouraged to give such approval, thereby showing the political will to co-operate in the settlement of conflict situations. A prior unilateral declaration would

(Mr. Dastis, Spain)

reduce tensions by avoiding a discussion in the heat of the moment on the need to decide whether or not to admit a mission, while also having a deterrent effect, because it would be clear that the facts triggering the conflict would be the subject of an investigation. In that context, his delegation welcomed the decision taken by the Secretary-General to send a fact-finding mission to Jerusalem. It regretted the reaction of the Israeli Government and hoped that it would agree to co-operate actively with the mission.

50. Although it had not had before it any concrete substantive proposal on that subject, the Special Committee on the Charter had also discussed the question of the peaceful settlement of disputes. It had taken note of the progress of work on the draft handbook, which he hoped would be available soon. It had held an extremely lively debate on the machinery for the peaceful settlement of disputes, in particular the International Court of Justice. For its part, Spain was prepared to accept the compulsory jurisdiction of the Court and would in the near future make a contribution to the Trust Fund designed to facilitate recourse to that mechanism.

51. With regard to the Special Committee's future programme of work, the finalization of the document on fact-finding should enable the Committee to undertake new tasks, but within the same areas. The suggestions made by the Soviet Union and Finland provided some good examples of such tasks. With regard to the peaceful settlement of disputes, the specific contribution of the Committee to the United Nations Decade of International Law should be to explore the possibilities that the Charter might offer in that area. The Spanish delegation was willing to assist in realizing that objective and thus help to enhance the capacity of the United Nations to resolve disputes between States in a peaceful manner.

52. Mr. ROSENSTOCK (United States of America) said that, since its creation, the United Nations had scored some successes in the areas of human rights and the containment of armed conflicts. Yet, despite those achievements, crowned by a richly deserved Nobel Prize, there had been a sense of disappointment that the system was not working better and that it had even failed to function in certain key areas. However, more recent events, such as the Iran-Iraq conflict, had shown that the system was beginning to function in the manner intended by its founding fathers.

53. Since the Committee had last considered the items before it, a number of remarkable developments had taken place. First, there had been the independence of Namibia, and then the co-operation between the United Nations Secretariat, Cuba, South AFrica, Angola and the United States in the resolution of closely interrelated problems. Furthermore, the collective security system had been seen to function as originally intended, so as to fashion a unified global response to the invasion of Kuwait; and lastly, there had been the decisive contributions of the United Nations to the progress in Central America, Cambodia and Western Sahara, as well as its role in the Haitian electoral process. His delegation had thus reached the conclusion that the dawning of a new era was not the time to alter the mechanism of collective security. Sweeping changes and the reforms called for in

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(Mr. Rosenstock, United States)

the 1970s and 1980s were clearly inappropriate just as the system was beginning to function. That did not mean that the United Nations could not be improved, and the Special Committee at its 1990 session had in fact focused on ways and means of enhancing the effectiveness of the system.

54. The topic of the rationalization of existing procedures provided an excellent example of how the functioning of the United Nations could be enhanced. The Special Committee had put forward some 10 proposals, which his delegation considered to be almost too modest - especially recommendation 1 (A/45/33, para. 86), which waS even more modest than the text agreed upon in 1988. Furthermore, the General Assembly was hampered in its work by an excessively long and unrationalized agenda. Accordingly, recommendations 3, 4, 5 and 6 could provide a major contribution in that direction. In spite of their modesty, the proposals were a step in the right direction and the United States wholeheartedly favoured their early adoption.

55. The Special Committee should return to the question of rationalization at some point in the future. It was to be hoped that, by that time, aficionados of Article 18 would no longer cling to the arguments of the past and would let themselves be won over by the new climate. It could also be hoped that by that time there would no longer be any support for the idea that there was something democratic in the principle of "one nation one vote". Giving one vote to both Liechtenstein and the People's Republic of China might be reasonable or unreasonable, logical or illogical, workable or unworkable, but it was certainly not democratic - nor was it undemocratic. Finally, his delegation wished to applaud the delegation of Romania for its proposal to eliminate the agenda item on the peaceful settlement of disputes. The removal of the item would not lessen the consideration given by the General Assembly to the substance of that item, but would allow it to operate in a more rational fashion.

56. Consideration of the question of the maintenance of international peace and security had also provided the Special Committee with an opportunity to make some progress. The sponsors of the two competing proposals had drafted a joint text, which could in fact serve as a good example of rationalization. The elaboration of the new text (A/AC.182/L.66) marked significant progress towards a final document which could be submitted to the General Assembly for adoption at its forty-sixth session.

57. His delegation had listened with interest to the remarks of the delegation of Finland on the question of sanctions management. That was a question which required clarification. The Committee would have to consider whether the issues would be better entrusted to those responsible for them - namely, the Sanctions Committee itself - or whether they would best be debated by parties which were slightly more removed and which might have a broader perspective. While leaning towards the former approach, his delegation was keeping an open mind on the matter.

58. On the subject of the peaceful settlement of disputes, the Secretariat had continued its excellent work on the elaboration of a draft handbook. The Special

(Mr. Rosenstock, United States)

Committee had held a brief exchange of views on the matter. The world was in a period marked by positive developments in that field. Thus, as pointed out by the delegation of Italy, the International Court of Justice had an increasingly heavy work-load, while only a few years ago, the United States had had to initiate the inclusion in the agenda of the General Assembly of an item on strengthening the role of the Court. His Government had recently initiated certain negotiations designed to enhance the Court's role in the resolution of disputes. It had been particularly pleased to hear the very positive comments on the Court by the delegation of the USSR. The delegation of Israel had shared its experience in using a combination of methods within the framework of the peaceful settlement of disputes. His delegation had commented on the use of various methods in a continuum in its written reply on the agenda item on the International Decade of International Law. In the future, primary discussion of those matters should take place in the context of the discussion on the International Decade of International Law.

59. The Special Committee was the only body uniquely qualified to focus on what the delegation of Italy had called the "law of the United Nations" as expressed in the Charter and in practice. Thus, any proposals dealing with the Articles of the Charter or their interpretation should be referred to the Special Committee. While the appropriateness of such proposals was open to discussion, the competence of the Special Committee in the field could not be questioned.

60. That did not mean that other tasks could not be assigned to the Committee. It could, for instance, serve as a forum for any intersessional work on the Decade. The comments made by the delegation of Brazil, both in the plenary Assembly and the Sixth Committee, had stressed the relationship between the structure of the institutions and the content and role of international law. That seamless web was best handled by a single body. Moreover, the liberal attitude of the Special Committee regarding the participation of observers at all stages of its work ensured that all who wished to participate in the work on the Decade would be free to do so. In addition, it would be easier to extend the length of the Special Committee's session to ensure adequate time for discussion of the Decade than to create a new body.

61. Mr. VUKAS (Yugoslavia) noted with pleasure that, at its last session, the Special Committee had made significant progress, in a constructive working atmosphere, in the consideration of the topics on its agenda. With respect to the maintenance of international peace and security, that progress was evident in the submission of a joint working paper on United Nations fact-finding activities. The content of that new text had been considerably improved. He hoped that the Special Committee would be able to harmonize the contents at its next session and to present the text for adoption by the General Assembly at its forty-sixth session. His delegation was prepared to contribute fully to that end.

62. There was a close interrelationship between United Nations fact-finding activities and preventive diplomacy. His delegation therefore wished to reiterate that, in its view, the Special Committee should work primarily on the basis of the

idea that fact-finding activities were linked with prevention. It supported the stand taken by the Secretary-General in his report on the work of the Organization: while the provisions of Chapter VII of the Charter were essential to the system of collective security, the action they provided for was a measure of last resort, so that preventive missions remained of the highest importance.

63. The Special Committee should continue to attach priority to the role of the United Nations in the maintenance of peace, but there were other questions that it might also consider. Yugoslavia supported the Secretary-General's proposal for a strengthening of that role: for example, the agenda of the Security Council should not be confined to items formally inscribed at the request of Member States. Periodic meetings of the Security Council should make it possible to survey the political scene and identify areas of friction. There were also the proposals by the Soviet Union, contained in the report of the Special Committee (para. 14): they were extremely interesting from the point of view of strengthening the mechanisms of the United Nations.

64. With regard to peaceful settlement of disputes, the Special Committee had examined the draft handbook prepared by the Secretariat. The handbook, which should be ready in 1991, would be of great practical importance. In that regard, he drew attention to the fact that the issue of the peaceful settlement of disputes was being considered under three different items of the General Assembly's agenda. Perhaps it should be eliminated as a separate item, and the Special Committee should be entrusted with the task of elaborating certain activities to be included in the programme for the United Nations Decade of International Law.

65. Greater emphasis had been placed on the importance of international law by the changing climate in international politics. In that connection, mention had been made of a strengthened role for the International Court of Justice, to take account of the wishes of States, which seemed readier to resort to it. At the forty-fourth session, Yugoslavia had deemed positive the initiative of the Secretary-General to establish a fund based on voluntary contributions to assist developing countries in bringing cases before the Court. The Secretary-General was now putting forward a new initiative: he wished to have the authority directly to request an advisory opinion from the Court. It was a proposal that deserved to be considered seriously, and his delegation concurred with the conclusions on the question reached by the representative of Italy.

66. After considering the question of the rationalization of the procedures of the United Nations for many years, the Special Committee had completed a draft document on the subject. There was no doubt that, once it had been adopted by the General Assembly, the document would be an important contribution to the rationalization of the existing procedures of the United Nations.

67. Mr. MIMOUNI (Algeria) said that the Special Committee had responded to the concerns of those who felt that the commitment of States to the purposes and principles of the United Nations should be accompanied by a renewed determination to bring about the necessary changes called for in the United Nations, which was

(Mr. Mimouni, Algeria)

being challenged to exhibit greater efficiency and assume fuller responsibility. The political will necessary for such an undertaking had long been sadly lacking, leading to inertia in the Special Committee and in certain major organs of the United Nations, and accentuating their incapacity. However, there had been no shortage of ideas or proposals, particularly from the non-aligned countries, offering the prospect of a democratic international system. For a long time, only the countries of the third world had seemed, with as much conviction as perseverance, to advocate change, particularly with regard to international peace and security, whereas those whom the Charter had entrusted with special responsibility in that area had energetically defended maintenance of the status quo. It was now necessary to seize the historic chance offered to the international community to build a new order at the service of universal peace and progress. Furthermore, the Special Committee on the Charter must be revitalized to take fresh account of its original purpose. More than ever, its work must show dynamism, boldness and vision in its approach to the task of democratizing international relations.

68. The most recent session of the Special Committee, which had benefited from a particularly relaxed working atmosphere, had given top priority to the question of maintenance of international peace and security. The session had thus provided an occasion for reconciliation of positions and for some progress on the items on the agenda. His delegation had welcomed the formulation of a unified document on fact-finding by the United Nations in the field of the maintenance of international peace and security, on the understanding that there should be a consolidated approach so as to cover all questions concerning the prevention of conflicts. In that context, and without prejudice to the principle of prior consent by the State concerned, the task was to succeed in promoting the emergence of behaviour based on a universally applicable, if implicit, code of conduct. Fact-finding must also be designed so as to facilitate settlement of disputes within regional frameworks, where they existed, and to encourage initiatives and proposed solutions which those frameworks should strive to implement in accordance with Article 52 of the Charter. Such an approach seemed all the more desirable inasmuch as regional organizations such as the Organization of African Unity had given proof of their capacities.

69. In that context, his delegation had noted with interest the Soviet proposals on new issues for consideration in the Special Committee (para. 14). Proposals such as the expansion of co-operation between the United Nations and regional organizations, the broadening of the peace-making efforts of the Secretary-General, measures for specific application of resolutions of the General Assembly and of the Security Council, or the strengthening of the system of collective security provided for in the Charter, were conducive to a strengthening of the role of the United Nations and deserved particular attention in the Special Committee during its coming sessions.

70. Work on the preparation of a handbook on the peaceful settlement of disputes between States had reached its final stage. The Secretariat had thus accomplished

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(Mr. Mimouni, Algeria)

its task, and it was a matter of satisfaction to learn that the draft handbook would be ready before the next session of the Special Committee.

71. While it concurred fully with the principle of peaceful settlement of disputes between States, his delegation had some doubts regarding the need for, and value of, a general instrument on settlement of disputes. The United Nations Charter contained the necessary provisions, carefully developed in several legal texts of fundamental importance, such as the Manila Declaration (Assembly resolution 37/10) and the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field (resolution 43/51). Furthermore, the question of peaceful settlement of disputes was one of the main components of the programme for the United Nations Decade of International Law. The international community thus already had an extensive array of instruments, and respect for the principle of peaceful settlement of disputes remained contingent, not on the formulation of additional texts, but on the political will of States.

72. During its latest session, the Special Committee had finally adopted proposals aimed at rationalizing the procedures of the United Nations. Having thus completed its work on that question, it would now be able to concentrate on the priority question of maintenance of international peace and security, and to devote its energies to examination of more innovative ideas. That would be the best way in which it could take stock of its environment and finally provide evidence that it was both an organ for detailed legal analysis and also a tool for the accomplishment of the major project of renovating the United Nations.

The meeting rose at 6.15 p.m.

UNITED NATIONS
General Assembly
FORTY-FIFTH SESSION
Official Records

SIXTH COMMITTEE
17th meeting
held on
Wednesday, 17 October 1990
at 10 a.m.
New York

SUMMARY RECORD OF THE 17th MEETING

Chairman: Mr. MIKULKA (Czechoslovakia)

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22 October 1990

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The meeting was called to order at 10.25 a.m.

AGENDA ITEM 144: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (*continued*) (A/45/33)

AGENDA ITEM 139: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (*continued*) (A/45/436 and Add.1, A/45/522-S/21795, A/45/527-S/21801, A/45/597, A/45/598-S/21854, A/45/600-S/21857; A/C.6/45/L.1)

1. Mr. LINTON (Sweden) said that the forty-fifth session of the General Assembly was taking place at a time when, on the one hand, political barriers among many States had been broken down. On the other hand, however, the world was facing a serious international crisis following the illegal occupation and annexation of Kuwait. The international community's response had been convincing. The mechanisms of the United Nations and the principle of collective security had been applied as originally intended.

2. The Special Committee had made considerable progress over the past year, as reflected in the consolidation of two working papers on fact-finding into a single document (A/45/33, para. 68). Paragraphs 18 and 19 of the paper in question on unilateral declarations were interesting, as was the idea of entrusting fact-finding functions to international organizations or their representatives.

3. Sweden noted that at its most recent session the Special Committee had been able to finalize a draft document on the rationalization of existing United Nations procedures.

4. The draft handbook on the peaceful settlement of disputes between States would be a very useful instrument, and Sweden would make every effort to ensure that it was widely distributed. However, Sweden endorsed Finland's view that it was doubtful whether the item on the peaceful settlement of disputes between States should be retained on the Special Committee's agenda. With regard to new items for consideration by the Special Committee, Sweden supported Finland's proposal on the consideration of practical programmes relating to action under Chapter VII of the Charter, such as the issue of "sanctions management" and the plight of third-country citizens stranded in the State against which the United Nations had decided to take measures.

5. The International Court of Justice remained the focal point of third-party dispute settlement. Sweden therefore welcomed Poland's recent acceptance of the Court's compulsory jurisdiction, under Article 36, paragraph 2, of its Statute.

6. It was true that as a result of recent international developments international law had entered an operative stage. He wondered, however, whether even more could be done currently to strengthen the rule of law in international relations. More specifically, he wished to comment on the role of the International Law Commission and that of the Sixth Committee.

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(Mr. Linton, Sweden)

7. Sweden shared the view expressed by the Minister for Foreign Affairs of Poland, in his address to the General Assembly at the current session, that during the Decade of International Law more attention should be focused on the Commission's work. Sweden also shared his view that the Commission should devote less time to academic topics and discussions and instead concentrate on the great legal issues of the current time, elaborating specific law-making treaties.

8. The Sixth Committee's work had been brought into focus in recent years. Various methods had been suggested for streamlining its work, particularly the way in which it dealt with the Commission's report, and in 1988 informal discussions had been held on the subject. The legal advisers to the Ministries of Foreign Affairs of Canada, India, Mexico, Poland and Sweden, who participated in the Committee's work, had come to believe that it was important to establish a point in time when the individuals responsible for international legal matters at ministries of foreign affairs and for formulating instructions to the representatives of the corresponding countries in the Committee, or for supervising that activity, should also take part in the Committee's deliberations. They believed that it might be useful if the Committee to a greater extent than earlier provided a forum where such individuals could meet. In June 1990 the five legal advisers to whom he had just referred had written to their counterparts at other countries' ministries, inviting them to meet in a more formal setting to discuss matters of common interest. The letter of invitation stressed that the Committee had a special role to play under General Assembly resolution 684 (VII), as well as a special responsibility for monitoring international legislative work. The Committee should become the forum for decisions and initiatives in the legal field. Various options with respect to the Committee's work were set out in the letter. Sweden hoped that as many heads of legal departments as possible would be able to participate in the discussions, which would take place on Monday, 29 October.

9. Ms. RAUSCHER (Austria) said it was encouraging that the Special Committee had continued its work in a constructive manner.

10. Fact-finding activities could make an important contribution to the maintenance of international peace and security. She noted, in that connection, that in his report on the work of the Organization (A/45/1) the Secretary-General indicated that the means currently at his disposal for gathering the information that was necessary for averting the outbreak of conflicts were inadequate. Austria actively endorsed the concept of promoting preventive measures by the United Nations. Responsibility in that area necessarily lay with the Security Council and the Secretary-General, within their respective competences under the Charter. Unreserved co-operation with the competent United Nations organs was required of all States, under Article 25 of the Charter. The commitment to engage in such co-operation would best be exemplified by unreserved consent by all States to admit fact-finding missions to their territories. Such a commitment should be made by means of a unilateral declaration, as envisaged in paragraph 18 of the consolidated working paper (A/45/33, para. 68). Austria hoped that the Special Committee could complete discussion of that subject at its 1991 session and that the corresponding draft could be submitted to the General Assembly at its forty-sixth session.

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(Ms. Rauscher, Austria)

11. Austria welcomed the proposals concerning the rationalization of existing United Nations procedures set out in the draft document submitted to the General Assembly at the current session for adoption. However, it was disappointing that agreement had been possible only on the lowest common denominator.

12. The draft handbook on the peaceful settlement of disputes between States would be very useful. Austria believed, however, that once the handbook had been finalized and in view of the primacy of the concept of promotion of the peaceful settlement of disputes within the framework of the Decade of International Law, the topic of the peaceful settlement of disputes should no longer be kept on the Assembly's agenda as a separate item.

13. Her delegation wished to recall its initiative at the forty-fourth session of the General Assembly with regard to the need to elaborate a system for the prevention and settlement of disputes concerning the environment. A whole new body of international environmental law was being developed, which should now be completed through the provision of adequate means of dispute settlement. In the future, environmental disputes would be one of the central areas where the peaceful settlement of disputes would be called for. The subject should therefore be a central topic for discussion in the context of the Decade.

14. The compulsory jurisdiction of the International Court of Justice was a corollary of acceptance of the principles of the supremacy of law in international relations and the peaceful settlement of disputes. Austria had therefore submitted to the Court's compulsory jurisdiction by making a declaration under Article 36 of the Statute, without any reservation other than that of reciprocity. Her delegation urged other States to do likewise. Austria welcomed both the withdrawal of reservations regarding the Court's compulsory jurisdiction by a number of States and the significant shift in the attitude of States towards mandatory third-party dispute settlement. With regard to the Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice, her delegation wished to announce that Austria intended to contribute an amount of $10,000, subject to parliamentary approval.

15. The proposal put forward by the Soviet Union at the Special Committee's latest meeting merited further considered. Finland's proposal to consider practical problems relating to action under Chapter VII of the Charter was also interesting. However, Austria wondered whether the elaboration of generally applicable guidelines was actually feasible. General guidelines might lack the necessary flexibility when applied to a particular case before the Security Council. In any event, it should be made clear that the Council must remain the master of its own procedure and be free to decide in any given case how it should proceed. However, Austria was prepared to give the proposal further thought in the light of any additional explanations Finland might wish to provide.

16. Mr. AL-DOSARI (Bahrain) expressed his delegation's appreciation for the report of the Special Committee. He urged that the unified document on fact-finding by the United Nations in the field of the maintenance of international peace and

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(Mr. Al-Dosari, Bahrain)

security be studied carefully, with a view to its unequivocal adoption. It was to be hoped that the draft handbook on the peaceful settlement of disputes between States being prepared by the Consultative Group would be useful in the preparation of a universal convention on the peaceful settlement of disputes within the framework of the Decade of International Law.

17. He reiterated his delegation's conviction regarding the need for peaceful settlement of disputes between States in accordance with the principles and provisions of international law, and for the avoidance of violence and threats in international relations. The Iraqi aggression against Kuwait demonstrated that the Iraqi régime still adhered to the principle of force, thereby violating all international principles, which repudiated armed conflict in order to spare mankind calamities it could well do without.

18. Mr. DLAMINI (Swaziland) said that the Special Committee was to be commended for its efforts over the past year. Swaziland urged it to be innovative in the future, within its terms of reference and within the bounds of realism.

19. The Charter had provided a reasonably fair framework for international peace and co-operation, but it needed periodic reviews and strengthening. The régime for peace under the Charter fell short of expectations. One obvious limitation of the régime was connected with the requirement of prior consent to United Nations intervention, as demonstrated by the meagre provision made for fact-finding by the Secretary-General. Another limitation was attributable to the clauses of the Statute of the International Court of Justice providing for reservations with respect to compulsory jurisdiction. It was ironic that the provisions of the Charter and the Statute should have a restrictive effect on United Nations peace-monitoring efforts. The central question was why world or regional peace should be jeopardized just because a State involved in a dispute had not consented to United Nations intervention. Surely, the principle underlying United Nations membership was that of absolute good faith. It was doubtful whether strict adherence to the doctrine of State sovereignty, justifying the requirement of prior consent, or entering a reservation under Article 36 of the Statute were consistent with either the principle of good faith or the primary purposes of the United Nations. The time had come for the United Nations to consider improving the way in which the principles in question operated.

20. Swaziland would support any effort in the context of the Decade of International Law to reassess the adequacy of the peace-keeping and dispute-settlement systems of the United Nations. The international community would be making a significant contribution to international peace and security if it could dispense with the principle of prior consent to United Nations intervention. A new institutional arrangement designed to ensure objectivity and confidence in the procedures preceding United Nations intervention in a situation of international conflict could be devised within the United Nations system. In fact, a new peace-keeping order should be established. United Nations intervention should be the rule, not the exception. If fact-finding missions could not be dispatched expeditiously, they were not of much value for peace-keeping purposes.

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(Mr. Dlamini, Swaziland)

21. The proposed handbook on the peaceful settlement of disputes between States should adopt a new and creative approach in dealing with some of the principles of international law to which he had just referred. Consensus should be encouraged, but it should not delay progress in the peaceful settlement of disputes. In the area of human rights, for instance, the efforts of the Commission on Human Rights to send investigatory missions to Member States suspected or accused of violating human rights had been either thwarted or compromised by States refusing to accept the missions. A good deal of time was spent negotiating the terms of visits. It was imperative that the United Nations should be able to intervene at an early stage when investigating allegations of human rights violations.

22. A relaxation of the principles of prior consent and State sovereignty by Member States in their dealings with the United Nations would simply mean that consent to intervention would be given in advance by the receiving State, in much the same way as in the case of recognition of the compulsory jurisdiction of the International Court of Justice, except that prior consent would be given without a requirement of reciprocity.

23. It was heartening that some Member States were already withdrawing their reservations under Article 36 of the Statute. The international community must take advantage of the existing ideological truce and peaceful overtures to strengthen the peace-making institutions of the United Nations. The "safeguards" built into the Charter and into multilateral agreements in the aftermath of the Second World War had served their purpose and were no longer relevant. No United Nations peace efforts should be delayed or avoided by outmoded concepts of international law and relations between States that had evolved in less tolerant times.

24. Swaziland accepted that the requirement of prior consent appeared to be in accordance with the principle of the sovereign equality of States and the policy of non-interference in the domestic affairs of other States. It also accepted that obtaining prior consent to United Nations intervention or fact-finding could greatly contribute to an atmosphere of trust and openness needed in the receiving State. It was not convinced, however, that the traditional notions of prior consent or State sovereignty in matters of international peace were necessarily consistent with the primary objectives of the United Nations. The traditional notion should operate only as between States inter se.

25. The Secretary-General's competence under the Charter with respect to intervention to avert escalation of international conflicts was indeed in urgent need of amplification. It was important that an effective fact-finding régime for the Secretary-General should be supported by an equally effective war-avoidance régime. Swaziland accepted that the role of the United Nations in securing peace in trouble-spots should not be viewed as exclusive or in any way suppressive of friendly or regional or other efforts that might be available in any such situations. A little rationalization of the agreed efforts should not be difficult once the principles were determined.

(Mr. Dlamini, Swaziland)

26. But fact-finding operations must be properly controlled and held to a high degree of responsibility. A Member State refusing to allow United Nations assistance in achieving peace either at home or abroad should be put on strict terms to avoid the escalation of the problem and to secure acceptable peace at an early stage. Swaziland supported greater democratization of United Nations peace-making processes and the disestablishment of the Security Council's veto system. It should be emphasized, moreover, that the question of the peaceful settlement of disputes was not important to small States alone.

27. Lack of political will was a major problem, as was the knowledge that the offender would get away with the crime. If the world community could rise to a level where success in the unauthorized use of force could not be guaranteed without an unjustifiable price to pay, the problem of political will would have been solved or at least contained. It was regrettable that the United Nations could not have at its disposal an amount of weaponry commensurate with its agenda for peace. For the time being, maybe, the international community should pin its hopes on a spirited programme in the field of the teaching, study and wider appreciation of international law.

28. Swaziland welcomed the establishment of the Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice. The Special Committee should perhaps consider whether it might be beneficial to have regional centres or divisions of the Court so as to reduce the cost of proceedings by poorer litigants. Or better still, the Court could be encouraged to move around the world, to the places where its services were required.

29. Swaziland pledged its support for the Decade of International Law. It had much ground to cover in the areas of international law and human-rights law, but with appropriate advisory services it could make acceptable progress during the Decade.

30. Mr. SCHAETTI (Observer for Switzerland) said his country wished to reaffirm the importance that it attached to the principle of the non-use of threat or force in international relations; it welcomed the key role played by the International Court of Justice in the peaceful settlement of disputes. On becoming a party to the Statute of the Court on 28 July 1948, his country had declared, under Article 36 of the Statute, that it recognized the jurisdiction of the Court without any reservations, apart from the usual condition of reciprocity. He wished to appeal once again to those States which had not yet done so to make a similar declaration.

31. He paid tribute to the Secretary-General for his tireless efforts in the area of the peaceful settlement of disputes and, in particular, for his creation of the Trust Fund to Assist States in the Settlement of Disputes, which was designed to help States lacking sufficient resources to settle their disputes through the International Court of Justice. His Government would be providing an amount equivalent to $40,000 to the fund.

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32. Mr. KARONKANO (Burundi) said that his delegation had read with interest the Special Committee's report (A/45/33) and applauded the work of its Chairman and members.

33. While the idea of sending a fact-finding mission to a particular State was a sound one, any mission of that nature should be subject to the prior consent of the State concerned, which was a logical corollary to the principle of sovereignty. The final text should therefore give unequivocal emphasis to the need for prior consent. Furthermore, before initiating a fact-finding mission, it was necessary to ascertain whether other bilateral or regional procedures has been implemented.

34. The principle of the peaceful settlement of disputes was particularly important for the smaller States, since it protected them against the aggressive tendencies of larger States and helped them to avoid becoming victims of the use of force. His delegation hoped that the various declarations adopted by the General Assembly with regard to the peaceful settlement of disputes would be applied in practice, for that would promote the use of existing legal mechanisms and enhance the ability of the United Nations to effect the peaceful settlement of the disputes brought before it.

35. The peaceful settlement of disputes encompassed both political and economic disputes. Several negative economic factors, including the downward trend in commodity prices and the crushing debt burden, were potential threats to political stability. That point had been stressed by his country's Minister for Foreign Affairs and Co-operation in his address to the forty-fifth session of the General Assembly.

36. His delegation appreciated the progress made in the work on the draft handbook on the peaceful settlement of disputes between States, which would certainly be a useful reference source on that topic. It could in addition serve as the basis for the elaboration of a universal convention on that subject within the framework of the United Nations Decade of International Law.

37. Mr. MARTINEZ-GONDRA (Argentina), speaking in exercise of the right of reply, said that one delegation had made a statement at the previous meeting which called in question elementary principles of democracy, such as the concept of one person, one vote. It had been said that to give voting rights to Liechtenstein and China might present logical difficulties in connection with Article 2, paragraph 1, of the Charter of the United Nations. The Organization was based on the principle of the sovereign equality of all its Members, including Liechtenstein and China. The principles embodied in the Charter had existed for centuries and were independently valid. Liechtenstein and China had different cultures and social systems, but they were equal in terms of international law, and each was entitled to a vote.

38. Mr. SANDOVAL (Ecuador), speaking in exercise of the right of reply, said that at the previous meeting, one delegation had cast doubt on the fundamental principles of the Organization and had drawn unflattering comparisons between some Member States. In the first place, the provisions of the Charter constituted an organic whole and must be applied by all States so long as they had not been

amended. There was no basis, therefore, for objecting to the principle that each Member State was entitled to one vote. Secondly, the concept of the legal and sovereign equality of States did not derive from a biased interpretation of the Charter, but was rather the basis of peaceful coexistence among all States within a democratic organization. Accordingly, it was unacceptable to draw a comparison between two Member States, one very large and the other very small, in order to call in question the appropriateness of their having equal voting rights. The experience of the previous meeting showed that it was essential to remain vigilant in defending the principles of the Charter. Even in an era of dialogue and universal co-operation, dangers persisted. His country would adamantly oppose any attempt to undermine the principle of the legal equality of States as reflected in the concept of one State, one vote.

39. Mr. MONTES de OCA (Mexico), speaking in exercise of the right of reply, said that he associated himself with the views expressed by the representatives of Argentina and Ecuador.

AGENDA ITEM 147: CONCILIATION RULES OF THE UNITED NATIONS (A/45/143 and Corr.1; A/C.6/45/L.2)

40. Mr. SAENZ de TEJADA (Guatemala), introduced draft resolution A/C.6/45/L.2, annex I to which contained the revised version of the conciliation rules proposed by his delegation in document A/45/143 and Corr.1.

41. His country was aware that conciliation had not been spectacularly successful as a means of resolving international conflicts, but he believed that there was a potential for improvement. Many bilateral, multilateral and regional treaties already provided for recourse to conciliation as a means of settling disputes with regard to their application or interpretation. Accordingly, States wishing to conclude ad hoc conciliation agreements could use the existing treaties as a guideline.

42. However, those models were not entirely satisfactory. Few of them made use of the work accomplished with regard to conciliation by the Institute of International Law in 1961. His Government had therefore proposed, for adoption by the General Assembly, a model set of norms contained in annex I to the draft resolution, entitled "United Nations rules for the conciliation of disputes between States".

43. A conciliation procedure could be applied to any type of dispute, with the exception of disputes of a purely legal nature. The rules provided for three conciliation modalities, namely, a sole conciliator, a three-member commission and a five-member commission. The procedure involving a sole conciliator, which was governed by chapters VI and VIII of the rules, differed substantially from that involving a commission. For instance, a sole conciliator could operate with greater flexibility and informality than a commission. However, a sole conciliator did not have investigative powers; accordingly, such a proceeding was not advisable in cases of disputes involving issues of fact only. The sole conciliator procedure was nearly identical to mediation except that it was carried out exclusively by individuals and was more formal than traditional mediation procedures.

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(Mr. Saenz de Tejada, Guatemala)

44. He drew attention to article 13, which provided for the secrecy of proceedings involving a sole conciliator, to article 12, paragraph 4, and to article 37, which sought to create a barrier between what took place in a sole conciliator proceeding and any subsequent arbitral or legal proceeding relating to the same dispute. He also noted that article 12, paragraph 2, would permit the sole conciliator to hear the parties to the dispute jointly or separately.

45. Turning to the rules governing the commission procedure, he said that five-member commissions were more common than those with three members, probably for the reasons set forth in paragraph 9 of annex II to the draft resolution. Nevertheless, a three-member commission was less costly and could conclude its work more rapidly. He noted that articles 23 and 24 of the rules conferred broad investigative powers on the commissions, which could act as fact-finding commissions in cases in which the dispute related exclusively to facts.

46. He drew attention to articles 32 to 36, concerning the secrecy of the conciliation proceeding; those provisions were based on the recommendations of the Institute of International Law, as were article 12, paragraph 4, and article 28, paragraph 2, which provided that neither the sole conciliator nor the commission could rule formally on issues of law or issue final conclusions with regard to facts.

47. Article 13, paragraph 3, and article 35, which were likewise derived from the work of the Institute, sought to ensure that evidence used in a conciliation proceeding could also be used in any subsequent judicial or arbitral proceedings. Among the provisions which his delegation regarded as innovative were article 25, which provided for expert assistance in disputes of a technical nature, and article 23, paragraph 2, which enabled the commission to ask a party to reconsider its request for a local investigation.

48. Article 38 was another innovative provision; it provided that any of the parties to conciliation proceedings could provide the sole conciliator or the Commission with comments on situations or facts relating to the dispute, on the understanding that under no circumstances would the origin of the comments be revealed to the other party. Without such a guarantee of confidentiality, comments by one party which were relevant to the case but liable to offend the other party might jeopardize the outcome of the conciliation proceedings. Under certain conditions, the sole conciliator or commission was permitted to convey the information to the other party concerned, but had to present it as coming from the sole conciliator or the commission itself. In that manner, the relevant information could be transmitted while avoiding any resentment on the part of the other party.

49. Another innovation concerned the investigative powers of the conciliation commission. Under existing agreements relating to conciliation, and under article 24 of the draft rules under consideration, the commission could conduct inquiries with regard to facts on which the parties to the dispute disagreed. However, article 24 added that the commission could also, following consultation

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with the parties, clarify facts which the parties did not seem to have taken into account. Yet another new provision (art. 48) dealt with the case in which only one party accepted the terms of settlement proposed; the other party had then to inform the first party in writing of its reasons for rejecting the terms. New negotiations might then be initiated, based on a narrower framework than that which had served as the basis for the unsuccessful conciliation proceedings.

50. The draft rules provided for United Nations participation in conciliation proceedings in various ways. Among them were the right of the State initiating the conciliation to request the assistance and advice of the Secretary-General (art. 2, para. 2); the right of the sole conciliator or commission to request assistance from the Secretary-General with regard to administrative and procedural aspects of their work (arts. 16 and 27, para. 2); and the provisions stating that the secretary of a commission could be a United Nations official (art. 22, para. 1) and that the commissions should meet at United Nations Headquarters (art. 27, para. 1).

51. Annex II contained an explanatory commentary on the application of the rules. Paragraphs 2 to 5 discussed how the draft rules could be combined with conciliation provisions contained in agreements into which the parties to the dispute had entered previously. In that connection, it was relevant to note that the United Nations Convention on the Law of the Sea left parties to a dispute entirely free to replace the rules applying to conciliation with any others they might choose.

52. Since the text of the draft rules was lengthy and complicated, he was aware that it would be unrealistic to expect the Committee to adopt the text, even if no amendments were proposed. Consequently, his delegation would not insist on putting the draft resolution to a vote. It would, however, suggest that the Committee should recommend to the General Assembly that it should include the item on the agenda of its next regular session; request the Secretary-General to distribute the draft text, along with any amendments which might be submitted during the current session, to all Member States, the relevant agencies of the United Nations system, regional intergovernmental organizations, and international legal institutions, soliciting their comments on those documents; and request the Secretary-General to submit to the General Assembly, at its next regular session, a report on the replies received.

53. Mr. KORNBLUTH (Israel) expressed his appreciation to the delegation of Guatemala for its proposal regarding conciliation rules, which had obviously been carefully researched and prepared.

54. Israel and Egypt had recently utilized conciliation in connection with the Taba boundary dispute, of which a peaceful settlement had been reached in 1988 and implemented in early 1989. The process of settling the dispute had taken place in three stages. The first had been that of negotiations. Subsequently, the methods of conciliation and arbitration had been employed simultaneously. Following the failure of the conciliation process, the dispute had finally been settled by arbitration.

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(Mr. Kornbluth, Israel)

55. Conciliation differed from arbitration and judicial settlement in a variety of ways, including the fact that the recommendations of the conciliation panel were not binding and that the conciliation process was a flexible one. It was the latter aspect that was of primary importance and led States to use conciliation in the settlement of their disputes. Unless otherwise constrained by prior agreements, the parties to a dispute were free to create their own procedural methods of implementing the conciliation process, adapting them to the specific case at issue.

56. Flexibility was therefore one of the most positive elements of the conciliation process. To the extent that it was weakened, the likelihood of the conciliation method being chosen was greatly diminished. In that connection, his delegation wondered how flexibility would be affected if a model set of conciliation rules, such as those proposed by Guatemala, were to be adopted. To be effective, model rules should incorporate the idea of flexibility, thereby providing a set of norms which States could use in whole or in part and to which they could add other provisions.

57. It was clear that, in elaborating its draft proposals, Guatemala had been aware of the need to safeguard the element of flexibility. At the same time, the current text could be made even more forceful in that regard. To that end, his delegation suggested that the last sentence of annex II, paragraph 1, which defined the model set of norms as comprehensive, should be deleted. States must remain free to incorporate the model norms as they wished and to depart from or add to them, depending on the circumstances. Similarly, article 1, paragraph 2, of annex I was not sufficient as it stood since it did not specifically allow for the incorporation of additional procedural provisions. As a result, that article limited flexibility. Accordingly, his delegation suggested that the words "or add to them" should be inserted at the end of the first sentence of article 1, paragraph 2.

The meeting rose at 12.10 p.m.

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UNITED NATIONS
General Assembly
FORTY-FIFTH SESSION
Official Records

SIXTH COMMITTEE
18th meeting
held on
Thursday, 18 October 1990
at 10 a.m.
New York

SUMMARY RECORD OF THE 18th MEETING

Chairman: Mr. MIKULKA (Czechoslovakia)

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LETTER FROM THE PRESIDENT OF THE GENERAL ASSEMBLY TO THE CHAIRMAN OF THE SIXTH COMMITTEE DATED 16 OCTOBER 1990

AGENDA ITEM 147: CONCILIATION RULES OF THE UNITED NATIONS (continued)

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Distr. GENERAL
A/C.6/45/SR.18
23 October 1990

ORIGINAL: ENGLISH

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The meeting was called to order at 10.15 a.m.

LETTER FROM THE PRESIDENT OF THE GENERAL ASSEMBLY TO THE CHAIRMAN OF THE SIXTH COMMITTEE DATED 16 OCTOBER 1990

1. The CHAIRMAN informed the Committee that he had received a letter dated 16 October 1990 from the President of the General Assembly, transmitting a letter dated 11 October 1990 from the Chairman of the Fifth Committee concerning agenda item 119, entitled "Programme planning", which had been allocated to the Fifth Committee.

2. In accordance with the letter received from the Chairman of the Fifth Committee, the Sixth Committee was invited to send to the Fifth Committee, by 9 November 1990, the views of delegations on the relevant programmes, indicated in the annex to the proposed medium-term plan for the period 1992-1997. Following the pattern established in the past, he proposed to forward the letter in question to the Chairmen of the five regional groups of the Sixth Committee, with a request that they transmit to him their comments, if any, by 7 November. He would return to the matter at a subsequent meeting of the Committee, once the views of the regional groups had been formulated. If he heard no objection, he would proceed accordingly.

3. It was so decided.

AGENDA ITEM 147: CONCILIATION RULES OF THE UNITED NATIONS (continued) (A/45/143 and Corr.1; A/C.6/45/L.2)

4. Mr. CALERO RODRIGUES (Brazil) said that before the General Assembly could adopt the draft resolution on United Nations rules for the conciliation of disputes between States (A/C.6/45/L.2) and its annexes, it would have to reflect upon several questions, some of which were related to substance and others to timing. The explanatory memorandum submitted by the representative of Guatemala (A/45/143) seemed to attach special importance to the conciliation rules adopted by the Institute of International Law in 1961 and the UNCITRAL Conciliation Rules of 1980; however, there were several other sources that were also worthy of consideration. Conciliation had originally appeared not as a method of settlement but as a function to be attributed to the mediator contemplated in the 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes. Other instruments had further developed the concept, establishing measures pertaining to optional conciliation and compulsory conciliation, as well as special conciliation machinery which, in fact, had not been very successful. Conciliation had also been developed in the Americas, especially in the 1948 American Treaty on Pacific Settlement of Disputes, known as the Pact of Bogota. Europe had concluded a Convention for the Peaceful Settlement of Disputes in 1957, and in Africa, a commission of mediation, conciliation and arbitration had been established in 1963. The 1969 Vienna Convention on the Law of Treaties envisaged conciliation as one of the means for the settlement of disputes concerning the application or interpretation of treaties, and set out, in an annex, the procedures and machinery

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(Mr. Calero Rodrigues, Brazil)

to be used. The United Nations Convention on the Law of the Sea also contained provisions and an annex on conciliation.

5. It was clear, therefore, that conciliation had been extensively treated, and that there was no dearth of conciliation machinery or of procedural rules for conciliation. If anything, there was an excess of mechanisms and an excess of procedural rules; he wondered whether it would be useful to add more. One might ask, however, whether it might not be useful to try a consolidation of existing mechanisms and rules. A first difficulty, and not a minor one, would be to adjust the application of any new instrument to the existing ones. A second problem had to do with the relationship between conciliation and the other means for the peaceful settlement of disputes, which brought up the question of timing. The period 1990-1999 had been declared the United Nations Decade of International Law, one of the main purposes of which was to promote means and methods for the peaceful settlement of disputes between States. According to the report of the Secretary-General (A/45/430), the proposal to elaborate an international convention on the peaceful settlement of disputes had received considerable support among the States expressing their views on the programme for the Decade. Although as yet there was no certainty that such a convention would in fact be elaborated, the possibility existed, and it would seem unwise to embark at the current stage on the examination of only one method of peaceful settlement of disputes, i.e., conciliation.

6. His delegation did not want to make any formal proposal, but would only ask the delegation of Guatemala to take Brazil's comments into account and to consider whether the best course to follow would not be to defer action on the Guatemalan proposal until specific decisions had been taken concerning the programme for the Decade of International Law.

7. Mr. WLOSOWICZ (Poland) said that the history of the institution of conciliation went back to the beginning of the twentieth century. Not surprisingly, it had been worked out well on the theoretical level but its application in practice had been less satisfactory. Indeed, there was no lack of norms of international law regulating conciliation between States. The main problem was that they were scattered in numerous international treaties, both multilateral and bilateral.

8. The definition of the scope of the draft rules on conciliation, proposed in article 1, paragraph 1 (A/45/143, annex II, appendix I), seemed to impose on the parties to a dispute an obligation to exhaust other means of peaceful settlement, namely negotiations, inquiry, good offices, and mediation, before they could resort to conciliation. His delegation believed that parties to a dispute should have a free choice of means for a solution, and should not be barred from using conciliation rules because of their failure to attempt to resolve the dispute by other means. Although a lively debate existed as to whether parties were obliged under international law to attempt to negotiate their disputes before recouse might be had to other means of settlement, it was clear that there was no obligation to resort to inquiry, good offices or mediation before other means of settlement might

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(Mr. Wlosowicz, Poland)

be involved. The requirement of recourse to other methods of dispute settlement before conciliation should not be included in the document.

9. Article 1 of the draft rules needed further clarification, in particular with respect to the fundamental issue of the nature of disputes to which the conciliation rules of the United Nations should apply. The stipulation that the rules did not apply to disputes of a purely legal nature in which no question of responsibility or reparation arose and in which there was no disagreement with regard to the facts was somewhat confusing, especially in the light of the earlier provision of that article, which stated that the rules applied to the conciliation of disputes between States whether the disputes were of a legal nature or not.

10. Article 3, on cases in which more than one State had the same interest with regard to the dispute, did not seem very practical. While it might happen that two States might have essentially the same viewpoints and the same interests, it should be kept in mind that even the smallest difference between the two viewpoints and between the two interests would create additional difficulties which would have to be overcome in order to arrive at a quick and just solution. Therefore, the document should contain more elaborate rules for such cases. Perhaps the rules of intervention applied by the International Court of Justice could be of assistance in that regard. Although those rules had not proved to be fully successful, they nevertheless presented a fairly well established framework for taking into account the rights of the third State. A similar formula might contribute to the process of conciliation in cases when more than two parties were involved.

11. As to the initiation of the conciliation proceedings, he wished to emphasize that article 2, paragraph 3, which provided that the proceedings should begin as soon as possible, was too vague. Such a provision could easily favour a State wishing to delay the operation of a conciliation commission. Strict time-limits should be introduced into the rules.

12. With regard to the composition of a conciliation body, it should be noted that the document rightly dealt with conciliation by a sole conciliator and conciliation by three or five conciliators separately. That regulation would no doubt be useful, but it lacked any reference to requirements regarding the qualifications of conciliators. Perhaps a reference to legal qualifications could also be taken into consideration.

13. A well-known international lawyer had pointed out not long before that in the 60 years in which conciliation had been available, less than 20 cases had been heard. Bearing in mind the more than 200 bilateral treaties and the various multilateral instruments which contained similar provisions, it seemed clear that conciliation had failed to become the routine procedure that its promoters expected. His delegation would fully support any initiative that would help to correct that situation.

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14. Mr. MARTINEZ GONDRA (Argentina) said that conciliation, which had been introduced around the beginning of the twentieth century, had been mentioned in several multilateral Latin American treaties and had been used to resolve a number of disputes in the region. Provision on conciliation had likewise been included in treaties concluded in Europe and in other regions. Conciliation was also mentioned in Chapter VI of the United Nations Charter and in the United Nations Convention on the Law of the Sea. Hence, it continued to be considered a suitable procedure for settling international disputes.

15. He noted that the traditional elements of conciliation were included in the draft rules submitted by Guatemala, which represented an effort to bring together, in detailed fashion, a set of model rules on the subject which might be adopted by States in bilateral agreements or included in multilateral treaties. In the view of his delegation, the Governments of Member States should be allowed sufficient time to study the draft rules and to express, in due course, their views and suggestions on them. In addition, the draft rules might be considered in the context of the United Nations Decade of International Law, particularly with regard to the question of the peaceful settlement of disputes.

16. Mr. RANJEVA (Madagascar) said that for a number of years conciliation had been the most successful type of machinery, in the field of positive law, for settling international disputes. The draft resolution submitted by Guatemala referred to a series of well-known precedents. In that connection, Madagascar wished to draw particular attention to annex V to the United Nations Convention on the Law of the Sea, as well as to the following conciliation cases: the 1981 Jan Mayen cases, which provided an example of successful conciliation; and the Mali/Upper Volta case, dealt with in the context of the Organization of African Unity, which provided an example of an unsuccessful procedure.

17. The chief merit of the Guatemalan proposal was that it represented an attempt to provide the international community with a basis for ad hoc agreements. Although the draft resolution was a good beginning, the undertaking's success called for painstaking preparation of a conciliation code.

18. Article 33, paragraph 1, of the Charter indicated that a particular sequence must be followed in the selection of the means of settling a dispute. That idea also appeared to be reflected in the Guatemalan proposal. However, account must be taken of the fact that, under Chapter VI of the Charter, the Security Council could call on the parties to a dispute likely to endanger international peace and security to resort to conciliation machinery. It was thus, for example, that the Conciliation Commission for Palestine had been established in 1949. The chief problem would be to distinguish between issues in the sphere of compulsory conciliation and those in the sphere of optional conciliation, in the light of Chapters VI and VII of the Charter. The concept of compulsory conciliation could be developed on the basis of the work of the Third United Nations Conference on the Law of the Sea. Listing issues that fell within the sphere of compulsory conciliation was a way of preventing reservations concerning State sovereignty. Such an approach would represent an intermediate solution that took account of both political and legal considerations. Madagascar viewed the amendment of the Charter

(Mr. Ranjeva, Madagascar)

as the ultimate outcome of the international community's endeavours in the field under consideration, and looked forward to the implementation of the proposed rules and machinery.

19. He wished to make a few specific comments on the Guatemalan text. Firstly, the explanatory memorandum should stress the relationship between politics (maintenance of peace and security) and law (various types of conciliation). Secondly, where actual legal machinery was concerned, a more integrated approach should be taken towards the institutionalization of conciliation. Thirdly, the effectiveness of a given conciliation procedure depended above all on the reaction it evoked from the parties involved. That aspect of the subject must be considered in greater depth, and justified drawing a distinction between compulsory and optional conciliation.

20. The Guatemalan proposal should be referred to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. The question of conciliation rules of the United Nations should continue to be included in the Assembly's agenda.

21. Mr. BALTON (United States of America) said that the Guatemalan proposal concerning the adoption of a set of conciliation rules should receive serious attention from Governments. Conciliation was one of several possible approaches to the peaceful settlement of disputes. Those approaches, which might be viewed as existing along a spectrum that included negotiation, mediation, conciliation, arbitration and adjudication, were not mutually exclusive; the exhaustion of one or more approaches might be a prerequisite for the use of other approaches.

22. Conciliation as a means of dispute settlement was not within the exclusive domain of private parties; it had been employed by States for some time. Its use in such cases had, however, been essentially ad hoc. The United States therefore believed that there was merit in the proposal to have a standing set of conciliation rules to which States might refer.

23. The adoption of such rules by the United Nations must be based on certain premises, however. First, both parties - or, where applicable, all the parties - to a dispute must freely consent to use of the rules. Second, the parties by mutual consent must be free to modify or adapt the rules as they deemed appropriate. The key to conciliation was flexibility, which must extend to establishing the very rules on the basis of which the conciliation was to proceed.

24. Lastly, it must be recognized that conciliation would not produce a settlement in all cases, since the process involved was by nature non-binding. Where sufficient willingness on the part of the disputants to reach an accommodation did not exist, conciliation was likely to fail and other forms of dispute settlement must be employed. Therefore, a set of rules for conciliation must protect against prejudice to any subsequent means of dispute settlement, particularly arbitration or adjudication. The Guatemalan proposal seemed to be based on those premises, but the United States would nevertheless like to review the proposals in greater

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(Mr. Balton, United States)

detail. It would therefore support a decision to request the Secretary-General to circulate the proposals to Governments and to relevant organizations for comment.

25. At the current stage he could offer several preliminary comments on the proposals, on the basis of the draft resolution set out in annex II to document A/45/143. In article 1, paragraph 1, of the proposed rules it was not completely clear what was meant by the phrase "amicable methods of settlement other than conciliation". If "amicable" meant "non-binding" or "non-adversarial", then that phrase made sense. Where negotiations or other non-binding measures failed to resolve a dispute, parties might consider conciliation. However, if "amicable" meant "peaceful", then the provision in question suggested that the rules were to apply where all other peaceful means of dispute settlement had failed, including arbitration and adjudication. That would not make sense, as attempts at conciliation were often a prelude to arbitration or adjudication. In fact, the existence of binding dispute-settlement procedures could help the conciliation effort to succeed.

26. Several provisions of the proposed rules invited States involved in conciliation to request the Secretary-General's assistance. That was an interesting innovation, which should be considered carefully. One aspect of that innovation was not completely clear, however. Article 46 did not specify that States that were parties to the dispute must reimburse the Secretary-General for the cost of any assistance provided. In the view of the United States, that should be made explicit.

27. Chapter VI of the proposed rules appropriately envisioned a considerably less formal and less structured process than those in chapter VII. However, the United States wondered whether it might be useful to include in chapter VI provisions analogous to those in chapter VII regarding the termination of conciliation. The relevant articles in chapter VII foresaw that the conciliation commission, at the termination of the process, would attempt to define in writing bases for a solution that were likely to be acceptable to the parties. The parties would then either formally accept or reject such a solution.

28. Although such a termination procedure might be considered somewhat formal for conciliation by a sole conciliator, some formal conclusion to the process might prove felicitous. He invited delegations to consider a case in which the parties appeared to accept a basis for settlement informally proposed by a sole conciliator. If that settlement was not reduced to writing or otherwise formalized, a later dispute over the precise terms of the settlement would be more difficult to resolve.

29. As the United States understood it, article 41 provided in essence that the parties to a dispute should not, during the conciliation proceedings, initiate arbitral or judicial proceedings in respect of that dispute except to preserve procedural rights in the event such subsequent proceedings were necessary. If that was indeed the intended meaning, it might be possible to make the article slightly clearer. It might also be desirable to provide for a situation in which several

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(Mr. Balton, United States)

facets of a dispute were being resolved separately and simultaneously, some by conciliation and some by other means. As the Committee had heard, the dispute between Israel and Egypt over Taba had raised such issues.

30. The United States looked forward to continued work on the Guatemalan proposal, as part of the Committee's general consideration of the topic of the peaceful settlement of disputes.

31. Mr. HAIDER (Pakistan) said that the international community was increasingly recognizing that international problems must be solved through peaceful means. There was, moreover, increasing recourse to the United Nations for the resolution of regional as well as international problems.

32. Pakistan, for its part, remained firmly committed to the principles of the settlement of international disputes by peaceful means and the promotion of friendly and harmonious relations among States. His delegation had an open mind on the peaceful settlement of disputes by resorting to such measures as good offices, negotiation, mediation, conciliation, arbitration and judicial settlement.

33. The Guatemalan proposal was a step in the right direction. The idea of extending use of the Conciliation Rules of the United Nations Commission on International Trade Law to international public law was interesting. The flexibility in the proposed model set of norms was an important element of conciliation. Pakistan noted that the proposed rules were based on a number of existing instruments, which were listed in the corrigendum to Guatemala's explanatory memorandum (A/45/143/Corr.1).

34. Pakistan attached great importance to the item under consideration, which should be examined thoroughly, either in the Sixth Committee itself or by a small working group or an ad hoc committee established by the Committee. The adoption of the rules should therefore be deferred to a later session.

The meeting rose at 11.10 a.m.

UNITED NATIONS

General Assembly

FORTY-FIFTH SESSION

Official Records

SIXTH COMMITTEE
19th meeting
held on
Friday, 19 October 1990
at 10 a.m.
New York

SUMMARY RECORD OF THE 19th MEETING

Chairman: Mr. MIKULKA (Czechoslovakia)

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AGENDA ITEM 147: CONCILIATION RULES OF THE UNITED NATIONS (continued)

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Distr. GENERAL
A/C.6/45/SR.19
24 October 1990

ORIGINAL: ENGLISH

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The meeting was called to order at 10.15 a.m.

AGENDA ITEM 147: CONCILIATION RULES OF THE UNITED NATIONS (*continued*) (A/45/143 and Corr.1; A/C.6/45/L.2)

1. Mr. ASTAPENKO (Byelorussian Soviet Socialist Republic) said that his delegation joined with others in welcoming the draft conciliation rules submitted by the Government of Guatemala (A/C.6/45/L.2, annex I). The proposals reflected the fundamental and universally recognized principle of peaceful settlement of disputes, which was enshrined in the Charter and was a key element in the establishment of a new international order based on the rule of law in inter-State relations. The by-no-means painless transition from the law of force to the force of law had frequently underscored the relevance of that principle.

2. The proposed rules, which reflected a flexible approach, were an attempt to fill a gap in the procedures under international law for the peaceful settlement of disputes. They provided a reliable basis for further progress although the text as submitted needed to be worked out in greater detail after further study. His delegation would refrain from commenting, at the current stage, on the specific features of the proposals, pending consideration of, and a decision on, the way in which further work on the topic should proceed.

3. The elaboration of conciliation rules should form part of the programme for the United Nations Decade of International Law, and could be an integral component of a universal and comprehensive document on the peaceful settlement of disputes. However, since the programme for the Decade was still at the preparatory stage, it would be appropriate to consider the possibility of including the draft rules in the agenda of the next session of the Special Committee on the Charter - particularly in the light of the Secretariat's intention to complete the draft handbook on the peaceful settlement of disputes before the next session - thus facilitating a wide-ranging and substantive discussion on the ways in which the conciliation rules could best be implemented in the interests of strengthening international peace and security.

4. Mr. TRAXLER (Italy), speaking on behalf of the 12 States members of the European Community, said that given the importance the Twelve attached to the principle of the peaceful settlement of disputes as an essential element in the functioning of international relations, they welcomed the Guatemalan proposals. The proposed rules made thorough use of the existing precedents and scholarly contributions, of which they were an interesting synthesis, but it would have been useful to have specific indications of the sources of the various provisions.

5. Detailed observations on the proposals would be premature. However, the Twelve would like to indicate, without prejudice to any views they might subsequently express, that they had some doubts as to the scope of application of the articles, the wisdom of adopting different rules for cases where there was only one conciliator and cases where there was a conciliation commission, and also the rule concerning disputes involving more than two parties.

(Mr. Traxler, Italy)

6. The difficulty in deciding what to do with the Guatemalan proposals lay partly in the fact that no specific proposal on the peaceful settlement of disputes was currently before the Special Committee on the Charter, which had been considering the topic for many years. In addition, it was not yet known what action would be taken on the peaceful settlement of disputes during the Decade of International Law, or what part would be played by the Special Committee in that connection. The Twelve therefore limited themselves to suggesting that it would be preferable not to maintain the topic "Conciliation rules of the United Nations" as a separate item on the agenda of the Sixth Committee. The inclusion of their consideration in more wide-ranging plans for work in the field of the peaceful settlement of disputes seemed the most reasonable course of action.

7. Mr. VERENIKIN (Union of Soviet Socialist Republics) said that the Guatemalan proposals merited the most careful consideration, since they sought to further one of the basic aims of the Decade of International Law, namely, that of finding ways and means to encourage the peaceful settlement of disputes. The Soviet Union advocated the enhancement and effective use of the whole range of procedures for the peaceful settlement of disputes, from prevention and early identification of situations of conflict, to fact-finding and procedures for resolving disputes through the mediation, if necessary, of a third party.

8. The proposals envisaged the elaboration of rules which could be adopted, *mutatis mutandis*, by States in order to simplify the settlement of a dispute. Under the rules, only an invitation by one party and acceptance by the other would be required to initiate concilation proceedings.

9. His delegation considered that the proposals should either be submitted for consideration to the Special Committee on the Charter or reviewed in conjunction with questions relating to the Decade of International Law.

10. Mr. SAENZ DE TEJADA (Guatemala) pointed out that in introducing the draft resolution on United Nations rules for the conciliation of disputes between States (A/C.6/45/L.2), he had acknowledged the fact that, since the text was lengthy and complicated, the Sixth Committee probably would not have time to study it in detail. He had therefore suggested that the Secretary-General should be asked to distribute the draft rules to all Member States, the relevant agencies of the United Nations system, regional intergovernmental organizations and international legal institutions, soliciting their comments on the draft text. He had also suggested that the Sixth Committee should request the Secretary-General to submit to the General Assembly, at its forty-sixth session, a report on the replies received. Finally, he had suggested that the Committee should recommend to the General Assembly that it should include the item on the provisional agenda of its forty-sixth session (A/C.6/45/SR.17, para. 52).

11. His delegation had listened with great interest to the delegations that had taken part in the debate on the item. It had noted that, despite the favourable comments and the different suggestions made, no well-defined view as to what course should be followed in dealing with the item had emerged. It therefore wished to

(Mr. Saenz de Tejada, Guatemala)

make a few points which might help orient future activities with regard to the draft rules of conciliation.

12. In the first place, it should be noted that the discussions on the United Nations Decade of International Law were still at an initial stage, and so far had been limited to a general review of the role of international law. An important process of reflection was currently under way which might eventually lead to the adoption of norms and measures aimed at promoting international law. It was his delegation's understanding that one of the objectives of the Decade was to promote procedures for the peaceful settlement of disputes between States. Some delegations felt that the way to achieve that goal was to draw up an international convention, while others felt that the emphasis should be on making use of existing bodies and mechanisms. The discussion on the promotion of procedures for the peaceful settlement of disputes was indeed a very important one, and it would help generate a new vision and a new approach towards those procedures. For the time being, however, what was taking place was just a very general discussion.

13. It was clear from the views expressed that the draft rules on conciliation called for a more detailed technical and legal study than could be carried out in the framework of the Decade. The consideration and eventual adoption of a set of rules on conciliation would, of course, represent a step forward in the international community's efforts to promote the procedures for the peaceful settlement of disputes to be discussed in the context of the Decade; however, the draft rules on conciliation could be refined to the degree of technical perfection required only in an uninterrupted debate on the draft itself.

The meeting rose at 10.40 a.m.

UNITED NATIONS
General Assembly
FORTY-FIFTH SESSION
Official Records

SIXTH COMMITTEE
20th meeting
held on
Monday, 22 October 1990
at 3 p.m.
New York

SUMMARY RECORD OF THE 20th MEETING

Chairman: Mr. MIKULKA (Czechoslovakia)

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AGENDA ITEM 146: ADDITIONAL PROTOCOL ON CONSULAR FUNCTIONS TO THE VIENNA CONVENTION ON CONSULAR RELATIONS

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Distr. GENERAL
A/C.6/45/SR.20
25 October 1990

ORIGINAL: ENGLISH

The meeting was called to order at 3.30 p.m.

AGENDA ITEM 146: ADDITIONAL PROTOCOL ON CONSULAR FUNCTIONS TO THE VIENNA CONVENTION ON CONSULAR RELATIONS (A/45/141)

1. Mr. HOHENFELLNER (Austria), speaking also on behalf of Czechoslovakia, noted that Austria and Czechoslovakia had jointly requested the inclusion of item 146 in the agenda. Document A/45/141 contained a draft Additional Protocol to the Vienna Convention on Consular Relations, and an explanatory memorandum on the item. The aim of the proposal was to supplement the Vienna Convention on Consular Relations of 24 April 1963 by developing specific rules on consular functions. Austria and Czechoslovakia suggested that the General Assembly should request the Secretary-General to seek the views of Member States and other States parties to the 1963 Convention on the draft Additional Protocol, and to submit a report on that subject to the Assembly at its forty-sixth session.

2. Mr. TRAXLER (Italy), speaking on behalf of the 12 States members of the European Community, said that the proposal submitted by Austria and Czechoslovakia raised several questions, such as whether the listing of consular functions in article 5 of the Vienna Convention was insufficient, whether there was a need to develop specific rules which would be set forth in a multilateral instrument, and whether States deemed it useful to bind themselves to a set of rules regulating consular functions. The Twelve wondered whether States were convinced that the advantages of uniformity would prevail over the possible disadvantage of a limitation on their freedom to negotiate with other States on a bilateral basis.

3. Drawing attention to article 16 of the draft Additional Protocol, which stated that its provisions would not affect other international agreements, he said that the chief legal consequence of becoming a party to the new instrument appeared to be that a State would be precluded from agreeing that consular officers should perform fewer functions than those listed in the Additional Protocol. Even if article 16 were deleted, the listing of consular functions in the Additional Protocol would give a definite advantage in bilateral negotiations to the State which opposed reducing the list of consular functions.

4. In that connection, he recalled the European Convention on Consular Functions, elaborated by the Council of Europe and opened for signature in December 1967. That instrument and its two Protocols had yet to enter into force, as it had not been possible to obtain the requisite five ratifications in 23 years. In view of that experience, the proposal to develop detailed rules on consular functions should be approached with caution. Before further action was taken, the views of Governments should be sought as to the advantages and possibilities of success in negotiating an additional protocol.

5. Ms. GAO Yanping (China) said that since the adoption of the Vienna Convention on Consular Relations, States had developed a body of practice which should be taken into account in the elaboration of an additional protocol. While on the whole the provisions of the draft instrument reflected contemporary practice in the

(Ms. Gao Yanping, China)

field of consular functions, further adjustments were required in order to bring certain articles into line with the legal situation in some States. For example, article 1 stated that the provisions relating to nationals of the sending State should also apply to legal persons and partnerships under commercial law. However, under Chinese law, a partnership did not have the status of an independent legal person, and that was also the case in other States.

6. Under article 3, paragraph 1 (f), consular officers would have the right to authenticate the signature of nationals of the receiving State. State practice varied in that regard: in a large number of States, consular officers could authenticate the signatures and seals of the authenticating agencies of the receiving State, but could not directly authenticate the signatures of nationals of the receiving State.

The meeting rose at 4 p.m.

UNITED NATIONS

General Assembly

FORTY-FIFTH SESSION

Official Records

SIXTH COMMITTEE
21st meeting
held on
Tuesday, 23 October 1990
at 3 p.m.
New York

SUMMARY RECORD OF THE 21st MEETING

Chairman: Mr. LUKABU KHABOUJI N'ZAJI (Zaire)
(Vice-Chairman)

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AGENDA ITEM 146: ADDITIONAL PROTOCOL ON CONSULAR FUNCTIONS TO THE VIENNA CONVENTION ON CONSULAR RELATIONS (continued)

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7 November 1990

ORIGINAL: ENGLISH

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In the absence of the Chairman, Mr. Lukabu Khabouji N'Zaji (Zaire), Vice-Chairman, took the Chair.

The meeting was called to order at 3.20 p.m.

AGENDA ITEM 146: ADDITIONAL PROTOCOL ON CONSULAR FUNCTIONS TO THE VIENNA CONVENTION ON CONSULAR RELATIONS (continued) (A/45/141)

1. Mr. ALZATE (Colombia), referring to the draft Additional Protocol to the Vienna Convention on Consular Relations submitted by Austria and Czechoslovakia (A/45/141, appendix), said that the scope of the Convention should be broadened in view of the changes that had taken place in the fields of technology, communications and international trade since its adoption in 1963. It was necessary now to focus not only on consular privileges and immunities, but also on the actual functions to be exercised by the consular representative. As a party to the Vienna Convention, Colombia believed that it was essential to draft an additional protocol governing such matters as the issuance and use of passports and other travel documents and visas, and notarial functions and other legal acts. Nationals of all countries must be subject to uniform rules safeguarding their rights and clearly laying down their obligations. His delegation was therefore willing to discuss the matter with other delegations in the near future, either in a working group or in a committee.

2. Mr. MARTINEZ GONDRA (Argentina) said that although the draft before the Committee was useful in itself, Argentina viewed it chiefly as further proof of the climate of détente and co-operation that had developed among Governments.

3. The Vienna Convention on Consular Relations was one of the most widely accepted international instruments. Since its adoption, State practice had helped to consolidate its provisions and had reaffirmed the interpretation of the norms laid down in it, either by means of their direct implementation or through their incorporation in relevant domestic rules.

4. The Convention did not set out consular functions in detail, which perhaps partly explained its success, but instead provided a general framework. Some States, including Argentina, had supplemented it through the conclusion of numerous bilateral agreements. Argentina noted with satisfaction that Austria and Czechoslovakia indicated in their explanatory memorandum that an additional protocol should contain specific rules on consular functions without, however, trying to regulate every detail (A/45/141, annex). That position was an excellent starting-point.

5. However, before Member States embarked on drafting an additional protocol, they must decide whether the consular conventions concluded by States already dealt adequately with the matters listed in the explanatory memorandum. They should also consider whether other questions should be added to those listed in the memorandum. Argentina believed that, at the current stage, Governments should be requested to comment on the draft, and the Secretary-General should be requested to

(Mr. Martinez Gondra, Argentina)

prepare a report containing their replies. The Sixth Committee could then reach a decision on the draft and, if appropriate, decide how it should be considered.

6. Mr. J. DROUSHIOTIS (Cyprus) said that consideration should be given to further regulating and facilitating consular functions. Currently, detailed consular functions were regulated by bilateral agreements between the receiving State and the sending State. Many developing and small States had limited practice and legal experience in the field, and work in that area would thus be of significant benefit to those States in particular. Cyprus noted that in the explanatory memorandum, the sponsors of the draft indicated that rules of customary international law should continue to govern questions not expressly dealt with by the Additional Protocol, and that the purpose of the Protocol would be to focus on the functions of consular officials relating to nationals of the sending State.

7. Cyprus believed that the item required careful consideration. As a first step, the Secretary-General should be requested to seek the views and comments of States on the subject and to circulate the replies in a report to the General Assembly at its forty-sixth session.

8. Mr. KNOX (United States of America) said that, although the Vienna Convention on Consular Relations concentrated on consular privileges and immunities, not consular functions, bilateral agreements and international practice had created a large body of international law on the subject of consular functions. To their credit, the drafters of the proposed Protocol had drawn on that body of law. His delegation noted, for example, that many of the proposed provisions paralleled provisions that the United States had incorporated in bilateral consular agreements since 1963.

9. Wisely, however, the drafters had not attempted to codify all international practice in the area in question. The draft Protocol provided that customary international law should continue to govern questions not regulated by the Protocol's provisions; the Protocol should not affect agreements already in force; and States should be free to conclude agreements supplementing or amplifying the Protocol's provisions.

10. In some respects, the draft Protocol might improve upon existing international practice. For example, his delegation noted from a comparison of article 36, paragraph 1(b), of the Vienna Convention and article 15 of the draft Protocol that the proposed language was an improvement, in at least two respects, over the corresponding language in the Vienna Convention. First, the draft Protocol would require the receiving State to notify the sending State of its action unless the detained or arrested person objected, rather than requiring the receiving State to notify the sending State only if the person in question so requested. Second, the draft Protocol specified a time within which the notification would have to be made, rather than stating, as the Vienna Convention did, that the notification must be made "without delay". The draft Protocol would be a still greater improvement if it specified a shorter period of time than five days.

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(Mr. Knox, United States)

11. Of course, his delegation had questions about some of the draft provisions. For example, article 4 might give rise to problems of definition and of judicial sovereignty. Articles 10 to 13 appeared to rely largely on existing international practice. However, article 14 relied less on existing practice and would therefore have to be examined particularly closely. In addition, it would be necessary to consider more general questions, of the type raised at the previous meeting by Italy, about the purpose the Protocol would serve and the needs it would answer. The United States agreed that there was no reason to move hastily.

12. Uniformity in the area of international law under discussion was worth exploring, if it did not come at the price of undue restrictions on States' flexibility. The draft before the Committee provided a strong basis for further discussion of the topic.

13. Mr. ASTAPENKO (Byelorussian Soviet Socialist Republic) said that his delegation welcomed the proposal by Austria and Czechoslovakia contained in document A/45/141, while recognizing that the draft Additional Protocol could not claim to be definitive, as the sponsors themselves had acknowledged. It would, however, provide a basis for further codification in the field of consular relations, and was of practical interest to the Byelorussian SSR, which had recently acceded to the 1963 Vienna Convention.

14. In July 1990, the Supreme Soviet of the Byelorussian SSR had adopted a Declaration on State Sovereignty, which, *inter alia*, affirmed his country's determination to play its part as an independent, full and equal member of the world community, to act in accordance with the principles of the Universal Declaration of Human Rights and other generally-accepted instruments of international law, and to protect the interests of its citizens abroad. In that latter connection, the question of establishing consular relations directly with other countries, including Poland, Czechoslovakia, Germany and the United States, was being considered. While specific issues concerning consular relations were dealt with through bilateral agreements between States, the régime provided by the Vienna Convention on Consular Relations could furnish guidelines for States' conduct and the possibility of extending the régime by means of an additional protocol on consular functions merited careful study. Such a protocol might envisage broadening the scope of article 5 of the Convention by incorporating rules on specific consular functions and by establishing new provisions and principles determining the consular régime, taking into account developments in contemporary politics, the economy, technology and other fields.

15. In the summer of 1990, his country's consular services had been actively engaged in facilitating trips abroad for more than 10,000 Byelorussian children affected by the accident at the Chernobyl nuclear plant, and he wished to express his Government's gratitude to the consular services of many countries, including those of Austria, Belgium, Cuba, Czechoslovakia, France, Germany, Italy, the Netherlands, Spain, Switzerland and the United Kingdom, for their co-operation in expediting the issuance of visas. With that humanitarian exercise in mind, he wondered whether the Additional Protocol might not abolish visa requirements for

(Mr. Astapenko, Byelorussian SSR)

children, so that they could benefit from unrestricted travel. Such a procedure would be in conformity with the purposes and principles of the Charter and the Declaration adopted at the recent World Summit for Children.

16. With regard to the proposals of the Austrian and Czechoslovak delegations, he felt that the best approach would be for the Committee to request the Secretary-General to seek the views of Member States on the proposed text so that they could be taken into account in the preparation of a final version.

17. Mr. CALERO RODRIGUES (Brazil) said he agreed with the representative of Argentina that the Vienna Convention had perhaps been successful partly because it did not set out consular functions in detail. The proposals put forward by Austria and Czechoslovakia were quite detailed, in some cases maybe too detailed. Moreover, practically the entire content of the draft was already dealt with in article 5 of the Vienna Convention. However, the draft might well prove useful in some ways. Draft article 15, for example, was of particular interest to his delegation.

18. Brazil had reservations about requesting comments from Governments, and believed that it would be preferable for delegations to express their views on the subject in the Sixth Committee at the forty-sixth session of the General Assembly. Although there was no overriding need for an additional protocol, some of the points raised by Austria and Czechoslovakia certainly deserved further consideration.

19. Mr. HANAFI (Egypt) said that the draft before the Committee should be given serious consideration. Governments should therefore be given an opportunity to examine it in detail, so that they could express their views on the subject subsequently in the Sixth Committee.

The meeting rose at 4.05 p.m.

UNITED NATIONS
General Assembly
FORTY-FIFTH SESSION
Official Records

SIXTH COMMITTEE
22nd meeting
held on
Wednesday, 24 October 1990
at 10 a.m.
New York

SUMMARY RECORD OF THE 22nd MEETING

Chairman: Mr. MIKULKA (Czechoslovakia)

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TRIBUTE TO THE MEMORY OF MR. NASIM HAIDER, REPRESENTATIVE OF PAKISTAN IN THE SIXTH COMMITTEE

AGENDA ITEM 146: ADDITIONAL PROTOCOL ON CONSULAR FUNCTIONS TO THE VIENNA CONVENTION ON CONSULAR RELATIONS (continued)

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5 November 1990
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The meeting was called to order at 10.30 a.m.

TRIBUTE TO THE MEMORY OF MR. NASIM HAIDER, REPRESENTATIVE OF PAKISTAN IN THE SIXTH COMMITTEE

1. On the proposal of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of Mr. Nasim Haider, representative of Pakistan in the Sixth Committee.

AGENDA ITEM 146: ADDITIONAL PROTOCOL ON CONSULAR FUNCTIONS TO THE VIENNA CONVENTION ON CONSULAR RELATIONS (continued) (A/45/141)

2. Mr. PIRIZ-BALLON (Uruguay) said that item 136 was of great importance to his country, which was a party to the humanitarian-law conventions of 1864, 1907 and 1949. In 1985 Uruguay had also acceded to Additional Protocols I and II to the Geneva Conventions of 1949. Subsequently, his Government had conducted a careful study in order to fulfil its obligations under so-called Geneva law to the extent possible. Accordingly, at a seminar held at Montevideo in 1989 that had been organized by the International Committee of the Red Cross, a set of recommendations had been drawn up with a view to the adoption of specific measures to ensure implementation of the international rules of humanitarian law within the framework of domestic law. One such measure upon which particular emphasis had been placed had been the drafting of a declaration under article 90 of Additional Protocol I to the Geneva Conventions, which provided for the establishment of an international fact-finding commission to inquire into allegations of violations of the four Geneva Conventions or the Protocol. The relevant declaration made by Uruguay on 2 May 1990 was the nineteenth declaration of the 20 declarations required for effective implementation of the verification system laid down in the Protocol. Uruguay therefore hoped that the system would soon begin to operate.

3. With regard to item 146, it would be useful to consider and adopt an additional protocol to supplement the Vienna Convention on Consular Relations of 1963, to which Uruguay was a party. The draft Additional Protocol should be considered in detail, perhaps in a working group of the Sixth Committee.

4. As indicated in the explanatory memorandum annexed to document A/45/141, the purpose of the draft was to regulate certain aspects of the consular functions laid down in the Vienna Convention of 1963, more specifically in article 5 of the Convention, which was simply descriptive. However, the goal should not be to adopt an instrument that would restrict the exercise of consular functions. Although the normative foundation of consular functions was to be found in the relevant conventions, in the event of lacunae in those conventions such functions were governed by customary international law.

5. Some of the terms used in articles 3 and 4 of the draft Additional Protocol, which concerned the laws and regulations of the sending State and the receiving State, were not entirely clear. Article 10 also gave rise to doubts, since it dealt with the right of consular officers to board a vessel operating under the flag of their own State and was therefore obviously a rule that restricted the exercise of consular functions.

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6. Mr. NEDELCHEV (Bulgaria) said that the Vienna Convention lacked precise rules on consular functions. There was thus a gap, which was filled by bilateral agreements and customary international law. Since such bilateral agreements were applicable only between the respective contracting parties, a universal and unified approach towards regulating questions not dealt with by the Vienna Convention must be developed.

7. The proposal to supplement the provisions of the Vienna Convention by means of an additional protocol on consular functions should be given serious attention. In the drafting of such an instrument, particular attention should be paid to customary international law and bilateral practice in the field. The provisions of the Additional Protocol should not prejudice rights and obligations arising from agreements previously concluded by States, or preclude the conclusion of new agreements in conformity with international law.

8. It would be useful if the additional protocol regulated the right of the consular officer to register marriages between nationals of the sending State. The appropriate provision might be envisaged in article 3, paragraph 1 (c), of the draft Additional Protocol. The instrument should also lay down the functions of the consular officer in cases of inheritance. It was Bulgaria's intention to prepare draft articles on the issue, for submission in due course.

9. The draft Additional Protocol should be considered thoroughly. The Secretary-General should therefore be requested to circulate it to Governments for comments. The Secretary-General would then prepare the relevant report, for consideration by the Sixth Committee at the following session of the General Assembly.

10. Mr. TAHERI SHEMIRANI (Islamic Republic of Iran) said that the Sixth Committee should give attentive consideration to the proposal put forward by Austria and Czechoslovakia to fill lacunae in international law in the area of consular functions by means of a multilateral instrument. Furthermore, his delegation supported the inclusion of the item on the Additional Protocol in the Assembly's agenda at its following session, for consideration by a working group of the Sixth Committee.

11. Mr. GILL (India) said that the draft Additional Protocol must be given complete, detailed consideration. Since the principle of reciprocity was involved, his delegation joined those that had requested that the draft should be transmitted to Member States, intergovernmental organizations and other bodies for comments, before it was considered by the Sixth Committee at the Assembly's following session. He therefore supported the proposal that the Secretary-General should be requested to obtain the views of all the parties concerned and submit a report on the subject to the Committee at the following session.

12. Mr. CHRISTOFFERSEN (Norway) said that a reasonable and viable solution had been chosen for regulating consular functions in article 5 of the 1963 Convention. The most usual and most important consular functions had been enumerated, and a final paragraph of a more general nature had been included. Consular functions

(Mr. Christoffersen, Norway)

were also regulated in the European Convention on Consular Relations of 1967, which would be applicable to the 23 States members of the Council of Europe and could, in a sense, be regarded as a supplement to the Vienna Convention. The European Convention had been ratified only by Greece, Portugal, Spain and Norway, despite the endeavour made to draw up an instrument compatible with the domestic legislation of all the States concerned. The low number of accessions showed that most States members of the Council of Europe considered the scope of the European Convention too broad.

13. It could therefore be anticipated that the United Nations would encounter great difficulties if it undertook similar work. Bilateral agreements were the most appropriate instruments for regulating consular functions in detail, since they contained mutually acceptable provisions, even if the respective legal systems were different. The General Assembly would therefore not be making the best use of available resources if the draft continued to be considered in the Sixth Committee.

14. Mr. WLOSOWICZ (Poland) said that the extensive body of rules which governed diplomatic and consular relations between States was one of the most encouraging successes in the progressive development of international law. In his view, the law of diplomatic and consular relations provided reliable evidence that international law could be effective. The correct application of the rules governing consular relations was rooted in a widespread and time-honoured practice: there were currently more than 20,000 permanent consular missions around the world. It should not be surprising, therefore, that a solid international legal framework for their functioning existed, since it was also in the interest of all States that their consular services should operate smoothly.

15. In the contemporary era, consular relations between States were governed mainly by the Vienna Convention on Consular Relations of 1963 and by bilateral treaties which, in conformity with that Convention, expanded and developed the rules governing the relations of the parties *inter se*. Given the existence of customary rules in addition to those norms of positive law, it might be asked whether there was still a need for new rules. In that connection, he agreed with the view of a Polish scholar, Professor Makowski, that even if a consular convention existed, it did not always regulate all possible cases, because life was fluid and circumstances changed according to times and places. Accordingly, he believed that the initiative undertaken by Austria and Czechoslovakia of requesting the inclusion of an additional item on consular functions in the agenda of the current session (document A/45/141) was welcome and should be given due attention.

16. The sponsors of the draft Additional Protocol had started from the correct presumption that the Vienna Convention of 1963 concentrated on consular privileges and immunities and lacked precise rules regarding consular functions. A precise list of those functions would be very useful, because it would considerably reduce the incidence of recourse to customary law, which frequently created difficulties. Nevertheless, it would be necessary to include in the draft a provision relating to such additional recourse, since it was impossible to cover all situations which might arise.

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(Mr. Wlosowicz, Poland)

17. Having been drafted with expertise, the proposed Additional Protocol was a well constructed instrument. However, he drew attention to some features which could be improved. First, article 1, paragraph 2, might raise questions if the partnerships under commercial law to which it referred consisted of nationals of two or more countries; it was not clear whether it was the interests of the partnership or those of the individual partners which were at stake. Secondly, the wording of article 3, paragraph 1 (a), was a cause of concern, even though it was legally correct and perhaps necessary. The provision could be redrafted in order to give consular officers the right to keep a register only of those nationals who wished to be included. Lastly, the fact that many persons had more than one nationality might create problems in connection with the right of diplomatic protection.

18. Mr. GUEVORGIAN (Union of Soviet Socialist Republics) said that the Vienna Convention on Consular Relations, which was one of the major instruments elaborated by the International Law Commission, concentrated on privileges and immunities and did not deal with consular functions in detail. Although consular functions were generally governed by bilateral agreements between States, the proposal regarding the elaboration of an international instrument on that subject clearly merited attention.

19. In principle, the text of the proposed Additional Protocol constituted a sound basis for future work. At the current stage, only preliminary comments on the draft could be made. In that connection, his delegation believed, first, that the five-day period provided for in article 15, paragraph 1, for the receiving State to notify the consular post of the sending State of the detention or other restriction of the freedom of a national of the sending State was too long, and secondly, that the Protocol could include a provision relating to the duty of consular officers to issue visas in the shortest possible time.

20. Lastly, his delegation agreed with the proposal that the views of Governments should be sought with regard to the draft Additional Protocol and should be taken into account during the consideration of the question at the next session of the General Assembly.

21. Mr. MONTES de OCA (Mexico) said that he would focus on three aspects of the codification of consular law: document A/45/141, the prominence of diplomatic and consular law and the lacunae existing in diplomatic law.

22. Concerning the first aspect, while he shared the view that consular functions were primarily covered by bilateral agreements between States, he believed that the Additional Protocol could be useful as a general frame of reference for States which did not have extensive relations inter se in the commercial, diplomatic or consular sphere. His delegation, having decided to take part in the new activity, had transmitted document A/45/141 to the Mexican authorities and would share the comments which it received with the members of the Committee.

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(Mr. Montes de Oca, Mexico)

23. In that spirit, having listened to the pertinent statements made at the previous meeting by the representatives of Argentina and Brazil, in particular with regard to the procedures frequently used in the Committee, he expressed doubt as to the validity of the consensus on the elaboration and adoption of documents of a technical nature. In that connection, he recalled that the Committee had been warned in 1968 by Professor Yasseen that consensus procedures lacked meaning when they were applied to incontrovertible realities; he also recalled the opinion of Vignes that consensus was not appropriate for the adoption of decisions which required great clarity and entailed specific legal consequences for States. He also referred to the justified surprise of Professor Dupuy at the use of consensus in the elaboration of an instrument as technical and detailed as the United Nations Convention on the Law of the Sea.

24. His delegation agreed with the statement made by the sponsors of the draft Additional Protocol concerning the limited number of bilateral agreements governing consular functions. Indeed, in Mexico, only about 10 bilateral consular agreements were in effect, having been signed since between 1928 and the current period. In the multilateral sphere, Mexico was a party to both the Havana Convention regarding Consular Officers and the Vienna Convention on Consular Relations.

25. The bilateral regulation of consular relations in Mexico was as old as its independence. It figured, although briefly, in many treaties of friendship, trade and navigation signed from 1826 onward, including the agreement signed in 1842 with Austria, one of the sponsors of document A/45/141.

26. His country, which considered the consular function to be a very noble one, suggested that the Additional Protocol should reflect the human aspect of that function. Another point which should be considered was the consular function relating to the legal representation of the sending State before the tribunals of the receiving State, an area in which his Government had had some success, for example, in realizing savings as a result of not having to pay honoraria to foreign attorneys. Lastly, the text of the draft Protocol should be adapted to reflect the terminology of the Vienna Convention on Consular Relations. Indeed, the Spanish version would be vastly improved if the phrases "Estado acreditante" and "distrito consular" were replaced by "Estado que envía" and "circunscripción consular", respectively.

27. With respect to the prominence accorded diplomatic and consular law during the current session, he pointed out that five of the 13 agenda items assigned to the Committee related to that subject (items 135, 137, 143, 145 and 146). Although his delegation had no desire to make value judgements on the priority which those items merited, and although it realized that the idea might give rise to distortions or objections, it suggested that in the future the Committee should consider the possibility of conveniently grouping together consideration of those items.

28. Lastly, with regard to gaps in the field of diplomatic law, he recalled that at the beginning of the current debate on diplomatic and consular questions, the Committee had heard statements condemning flagrant violations of diplomatic and

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(Mr. Montes de Oca, Mexico)

consular law, which had ceased. When addressing the question of the security of missions, many delegations had referred to the most recent violations of the principles of diplomatic law. However, most of those delegations knew very well that it was difficult to provide a technical answer to the serious legal issues pertaining to two incidents which had occurred in 1990. Firstly, the relationship between an occupying or annexing State and an accrediting or sending State was not envisaged in the Vienna Conventions. Consequently, while it was true that the relationship between Iraq and the States whose diplomatic and consular functions had been attacked called for condemnation, diplomatic and consular law in that regard required further elaboration, or the relevant rules must be subject to special interpretation, for the issue was technically ambiguous. Secondly, the Vienna Conventions did not regulate the relationship between an invading country and States whose missions' diplomatic rights were trampled in a receiving State which had been invaded. The incidents involving the Holy See which had occurred in Panama in January 1990, as described in document A/45/455, pertained to a relationship which was not envisaged in those Conventions. The entire issue presented a challenge to the Sixth Committee.

29. Mr. TOMKA (Czechoslovakia) said that, although the joint proposal submitted by his Government and the Government of Austria to conclude an Additional Protocol on consular functions to the Vienna Convention on Consular Relations had been submitted in March 1990 and issued as an official United Nations document in April, its co-sponsors had not expected that it would be considered in detail at the current session, in view of the complexity and scope of the problems involved. Their intention had been to learn the views of Member States on the usefulness of the proposal and on how to proceed further with the draft.

30. In the course of the discussion, a number of States had indicated their interest in the idea of regulating consular functions in a multilateral document. Moreover, various States had agreed that the consular functions set out in article 5 of the Vienna Convention on Consular Relations needed to be defined more precisely, as was evidenced by the substantial number of bilateral agreements on consular questions, many of which concentrated on questions of consular functions. After all, the Vienna Convention of 1963 itself had envisaged the conclusion of more detailed, especially bilateral, agreements on consular matters.

31. Bilateral consular agreements had been concluded particularly by States whose relations had reached a certain level of development. While there were many such agreements between developed countries or between developed countries and certain developing countries, they were an exception between two developing countries. The current situation showed that the method of bilaterally regulating consular functions had objective limits. On the one hand, it had the advantage of making it possible for two States to regulate the mutual exercise of consular functions while paying attention to their specific needs; on the other hand, its disadvantage was that it was expensive and required considerable effort. Moreover, no State could bilaterally regulate consular functions vis-à-vis all members of the international community.

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(Mr. Tomka, Czechoslovakia)

32. His delegation wondered whether the treaty regulation of those questions should remain the privilege of a small number of bilateral agreements or whether the time had come to fill the existing vacuum with a multilateral legal instrument which represented a minimum standard in relations among States generally.

33. The co-sponsors of the draft were pleased to learn that the majority of the delegations which had participated in the debate saw the advantages of concluding a multilateral Additional Protocol on consular functions. Whether that instrument should regulate consular functions to a greater or lesser extent than that proposed by Austria and his country, and the question of the most suitable definition of particular consular functions, would be the subject of future negotiations with a view to finding solutions that would meet with agreement based on the consensus of the international community.

34. The co-sponsors of the draft felt that it would be useful for Member States and other States Parties to the Vienna Convention on Consular Relations to submit their comments and observations on the proposal contained in document A/45/141. The report of the Secretary-General based on the replies of States was to be submitted to the forty-sixth session of the General Assembly, and substantive consideration of the draft and of the written comments thereon could be entrusted to a working group of the Sixth Committee.

35. Lastly, by undertaking that task, the Sixth Committee would, *inter alia*, be able to provide a concrete answer to calls for its more dynamic participation in the process of the progressive development and codification of international law, the need for which had repeatedly been stressed during the current session of the General Assembly.

The meeting rose at 11.40 a.m.

UNITED NATIONS

General Assembly

FORTY-FIFTH SESSION

Official Records

SIXTH COMMITTEE
23rd meeting
held on
Monday, 29 October 1990
at 10 a.m.
New York

SUMMARY RECORD OF THE 23rd MEETING

Chairman: Mr. MIKULKA (Czechoslovakia)

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TRIBUTE TO THE MEMORY OF PROFESSOR PAUL REUTER

AGENDA ITEM 142: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SECOND SESSION

AGENDA ITEM 140: DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

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The meeting was called to order at 10.25 a.m.

TRIBUTE TO THE MEMORY OF PROFESSOR PAUL REUTER

1. The CHAIRMAN said that the International Law Commission and the international legal community as a whole were grieved at the death of Professor Paul Reuter, which had occurred a few months earlier.

2. On the proposal of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of Professor Paul Reuter.

AGENDA ITEM 142: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SECOND SESSION (A/45/10, A/45/469)

AGENDA ITEM 140: DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND (A/45/437)

3. Mr. SHI Jiuyong (Chairman of the International Law Commission), before introducing the report of the Commission, drew attention to the important contribution which Professor Paul Reuter had made to the work of the Commission as a member, as its Chairman and as a Special Rapporteur. That eminent representative of French legal thinking had died in Paris on 29 April 1990.

4. Introducing the report (A/45/10), he said that the Commission, in organizing the work of its most recent session, had taken as a point of departure paragraph 2 of General Assembly resolution 44/35, and had been able to consider the six topics in its current programme of work, as indicated in paragraphs 11 to 19.

5. With respect to the draft Code of Crimes against the Peace and Security of Mankind, work had proceeded in three directions, as indicated by the structure of chapter II: first, a discussion of the Special Rapporteur's report; second, the provisional adoption, on first reading, of three additional draft articles together with commentaries thereto; and, third, the consideration of the question concerning the establishment of an international criminal jurisdiction. Part I of the Special Rapporteur's eighth report (A/CN.4/430 and Add.1) dealt with complicity, conspiracy and attempt, and proposed corresponding draft articles. Part II was devoted to international drug trafficking, and two draft articles had been proposed. Part III concerned the question of the statute of an international criminal court.

6. With regard to parts I and II of the eighth report, he referred the Committee to paragraphs 33 to 88 of document A/45/10. The Commission's debate had focused on the Special Rapporteur's draft articles on complicity, conspiracy and attempt, and on methodological questions relating thereto, matters which had actually been discussed in detail during the consideration of the Special Rapporteur's fourth report (A/CN.4/398) at the Commission's thirty-eighth session. The question of the international illicit traffic in narcotic drugs had also been thoroughly discussed on the basis of the Special Rapporteur's proposed articles. Footnotes 26 to 34 reproduced both the Special Rapporteur's original proposals and revised texts

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suggested by him in the light of the debate. At the end of the discussion, the Commission had decided to refer to the Drafting Committee all the draft articles and, in particular, the two articles on illicit drug trafficking proposed by the Special Rapporteur.

7. Introducing in greater detail the three articles provisionally adopted by the Commission at its 1990 session, he said that two of them - articles 16 and 18 - belonged in the part of the draft Code devoted to crimes against peace. The Commission had provisionally decided that the third draft article - article X - belonged in the part of the Code to be devoted to crimes against humanity. The text of the three draft articles and commentaries thereto were to be found in section D.2 of chapter II of the Commission's report. In that connection, he stressed two points: the current wording presupposed the inclusion, at the beginning of each part of chapter II of the draft Code, of a phrase introducing the list of crimes; articles 16 and 18, as indicated in footnote 63, were currently confined to defining the acts constituting the crimes identified in those articles. Problems relating to the attribution of those crimes to individuals would be dealt with later in a general provision.

8. Article 16 dealt with international terrorism, namely, terrorism organized and carried out by a State against another State, which endangered international relations and therefore threatened peace. Paragraph 1 defined the constituent elements of international terrorism: (a) the intervention of agents or representatives of a State; (b) the specific acts constituting such intervention; and (c) the nature of those acts, which must be such as to create a state of terror in the minds of public figures, groups of persons or the general public. Paragraph 2 concerned the participation by individuals in acts of terrorism of agents or representatives of a State. The question arose whether such individuals should not be considered accomplices; hence the footnote appended to paragraph 2.

9. Article 18 characterized as crimes against peace the recruitment, use, financing and training of mercenaries. It did not cover the activities of the mercenaries themselves. A number of international instruments adopted during the past 25 years contained provisions on mercenary activities. Under article 3 (g) of the 1974 Definition of Aggression, which had served as the basis for the elaboration of article 12, paragraph 4 (g), of the draft Code, the sending by or on behalf of a State of mercenaries who carried out acts of armed force against another State (or its substantial involvement therein) qualified as an act of aggression. Article 47 of Additional Protocol I to the Geneva Conventions of 1949 defined mercenaries, and provided that a mercenary did not have the right to be considered a combatant or a prisoner of war. The 1989 Convention adopted by the General Assembly on the question of mercenaries established as offences the recruitment, use, financing and training of mercenaries, as well as the direct participation of a mercenary in hostilities or in a concerted act of violence. Paragraph 1 of draft article 18 set the scope and limits of the crime dealt with in the article. It made it clear that the crime was not constituted by the activities of the mercenaries themselves, but by the acts of recruiting, using, financing or training mercenaries. Under the paragraph, the only persons to whom the crime

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could be attributed were agents or representatives of a State. To fall under the definition, the acts must have one of two objectives: the mercenaries must be recruited, used, financed or trained either for activities directed against another State, or for the purpose of opposing the legitimate exercise of the right of peoples to self-determination as recognized under international law. Paragraphs 2 and 3 contained definitions of the term "mercenary". The first definition (para. 2) referred to persons recruited to fight in an armed conflict. The second definition (para. 3) referred to mercenaries recruited for the purpose of participating in a concerted act of violence aimed at overthrowing a Government or undermining the territorial integrity of a State. Both definitions reproduced word for word article 1, paragraphs 1 and 2, of the 1989 Convention.

10. In article X, the Commission had provisionally confined itself to the question of illicit drug trafficking as a crime against humanity, even though the Special Rapporteur had also submitted a draft article on such trafficking as a crime against peace. By taking that approach, the Commission had wished to stress that the activities in question posed a danger for all mankind, and to emphasize that they threatened not only the public order of the country where they occurred, but also the international community as a whole. The 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances made those activities punishable under the internal law of States parties. Article X went one step further by establishing an international crime subject to certain qualifications. Paragraph 1 defined the crime, but some of the elements of the definition must be read in the light of paragraphs 2 and 3. The acts covered by the definition were the undertaking, organizing, facilitating, financing or encouraging of illicit traffic in narcotic drugs; the phrase "on a large scale" conveyed the idea of a massive operation, and excluded isolated or individual activities of small dealers. As for its scope *ratione personae*, the article covered both agents or representatives of a State, and private individuals. The term "individuals" encompassed persons acting for or on behalf of organizations, associations or other bodies through which drug traffickers operated, as well as persons acting in the framework of financial institutions which were used to move money or other assets derived from the crime. Other words and phrases used in draft article X were explained and clarified adequately in paragraphs (4) to (9) of the commentary thereto.

11. He drew the Committee's attention to paragraphs 89 to 92 of the Commission's report, which reflected a divergence of views that had manifested itself both in the Drafting Committee and in the Commission itself as to the advisability of covering in the draft Code breaches of treaties designed to ensure international peace and security. As indicated in paragraph 92 of the report, the Commission had not been able to agree on guidelines for the future work of the Drafting Committee on that question.

12. So far as the establishment of an international criminal jurisdiction was concerned, there were two main reasons which had led the Commission to undertake an in-depth examination of the question. On the one hand, the matter of the draft Code's implementation and, in particular, the possible creation of an international

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criminal jurisdiction to enforce the provisions of the draft Code, had always been foremost in the Commission's concerns on the topic. On the other hand, the General Assembly, in its resolution 44/39, had requested the Commission "to address the question of establishing an international criminal court or other international criminal trial mechanism with jurisdiction over persons alleged to have committed crimes which may be covered under such a code, including persons engaged in illicit trafficking in narcotic drugs across national frontiers". In response to that request, the Commission had entrusted a working group to prepare a draft on the subject. Earlier efforts of the Commission and other United Nations bodies might serve as a basis for a background against which to gauge the feasibility of such a jurisdiction and the conditions in which it might be workable in today's world. Part of the report discussed in general terms the advantages and disadvantages of the possible establishment of an international criminal court as compared, in particular, to the system of universal jurisdiction based on prosecution before national tribunals.

13. The report contained an overview of the possible options and main trends evidenced in the Commission with regard to some specific issues raised by the creation of an international criminal court. The first such issue was that of the jurisdiction and competence of such a court and it was discussed under the headings of subject-matter, competence and jurisdiction over persons, the nature of jurisdiction and submission of cases. The second issue concerned the structure of the proposed court and was examined from the angles of institutional structure, composition of the court, election of judges, the organ charged with criminal prosecution and pre-trial examination. The Commission had also examined possible options concerning the legal force of the judgements rendered by the proposed court, penalties, the implementation of judgements and the financing of the court. The report dealt also with other possible international mechanisms for the trial of crimes against the peace and security of mankind, including the option of entrusting the International Court of Justice with jurisdiction in criminal actions against individuals and the proposal of a transitional step to complement national courts with judges from other legal systems in cases of international crimes.

14. The Commission's conclusions on that subject reflected a broad agreement in principle on the desirability of the establishment of a permanent international criminal court to be brought into relationship with the United Nations system, although different views had been expressed as to the structure and scope of jurisdiction of such a court. At least three alternatives might be considered: an international criminal court with exclusive jurisdiction, concurrent jurisdiction between an international criminal court and national courts, and an international criminal court having only a review competence. The Commission concluded that, in the end, establishing an international criminal court would be a progressive step in developing international law and strengthening the rule of law, but would be successful only if widely supported by the international community.

15. In connection with that question, he drew the Committee's attention to section P of the annex to resolution 25, recently adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. In

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that resolution, reproduced in document A/CONF.144/28, the Commission was encouraged on its codification work of aspects of international criminal law, including the possible establishment of an international criminal court or other international trial mechanism under General Assembly resolution 44/39. It was also suggested that such a court or mechanism could be established with all of the procedural and substantive arrangements that might guarantee both its effective operation and absolute respect for the sovereignty and self-determination of peoples and the territorial and political integrity of States. It further suggested the possibility of establishing separate courts of regional or sub-regional jurisdiction in which grave international crimes, and particularly terrorism, could be brought to trial, and of incorporating such courts within the United Nations system. He then invited the Committee to comment on that idea.

16. With regard to the jurisdictional immunities of States and their property, he noted the substantial progress towards finalization of the draft articles. In the third report of the Special Rapporteur, there was a review of the entire set of draft articles and certain reformulations were suggested, taking into account the views expressed by the members of the Commission and by Governments. At the last session of the Commission, the discussion had been centred around the outstanding articles, namely articles 12 to 28, and had concluded with the referral of those articles to the Drafting Committee which had completed its consideration of 16 articles and had submitted to the Commission a report which included the texts of all the relevant texts. The Commission expected to conclude its second reading of the draft at the next session, at which it would adopt a complete set of draft articles. The articles would then be submitted to the General Assembly at its forty-sixth session, together with the relevant commentaries.

17. Completion of that task would, however, depend on the resolution of a number of pending issues of a substantive nature, the inclusion of a special provision on State enterprises with segregated State property, a concept which some Governments would wish to see also reflected in article 18 in relation to State-owned or State-operated ships engaged in commercial services. Another issue related to immunities of State property from measures of constraint. In that connection, the Special Rapporteur had proposed two sets of alternative texts for articles 21, 22 and 23, the first being the text as adopted on first reading with certain modifications, and the second, which merged original articles 21 and 22 and replaced original article 23 with a new article, providing for exceptions to the principle of non-execution on the property of a foreign State. Despite the reservations of some members, there had been a wide measure of support for the second alternative. In any event, the majority of members of the Commission had taken the view that the Commission should defer its decision on the matter until agreement had been reached on the definition of the term "State" in article 2 and on the inclusion of the proposed provision on segregated State property.

18. On the topic of the law of the non-navigational uses of international watercourses, at its session of 1990 the Commission had examined the question of the relationship between navigational and non-navigational uses and the question of the regulation of international watercourses. It had also examined the issues of

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joint institutional management and the status of international watercourses and water installations in times of armed conflict. It had furthermore considered the question of the implementation of the draft articles (annex I of the draft). At the end of its debate, the Commission had referred the five draft articles proposed by the Special Rapporteur to the Drafting Committee.

19. Referring to the annex proposed by the Special Rapporteur, he pointed out that, although the question of the implementation of the draft articles was not mentioned in the outline on the basis of which the Commission was working, the Special Rapporteur thought that there was merit in having actual and potential watercourse problems resolved, in so far as possible, through civil law procedures which usually brought relief to those suffering harm more expeditiously than diplomatic procedures and could prevent problems from escalating and becoming unnecessarily politicized. Several members had subscribed to the general approach underlining the annex, while other members had found it somewhat lacking in consistency and had suggested that some of its articles should be transferred elsewhere. A further group of members had observed that the annex contained obligations more appropriate to a small group of integrated States, and that some of those obligations went beyond the limits of a framework agreement. In the light of the discussion to which the proposed annex had given rise in the Commission, the Special Rapporteur had recommended that only article 3, paragraph 1, and article 4 thereof should be referred to the Drafting Committee and had reserved the possibility of submitting proposals on other articles of the annex at the next session. The Commission would particularly welcome the views of Governments on its content.

20. Regarding article 22, he said that the term "ecosystem" referred to an ecological unit consisting of living and non-living components that were interdependent and functioned as a community. The obligation to "protect" the ecosystem of international watercourses was a specific application of the requirement contained in article 6, according to which watercourse States were to use and develop an international watercourse in a manner consistent with adequate protection thereof. The obligation to "preserve", while similar to that of protection, applied particularly to fresh-water ecosystems in pristine or unspoiled condition. Together, protection and preservation of aquatic ecosystems would help to ensure their viability as life-support systems, thus providing an essential basis for sustainable development. In requiring watercourse States to act "individually or jointly", article 22 recognized that in some cases it would be necessary and appropriate for watercourse States to co-operate on an equitable basis. The obligation to take such action jointly was a specific application of certain general obligations contained in articles 6 and 9. What constituted action on an equitable basis would, of course, depend upon circumstances. Among the factors to be taken into consideration, were the extent to which the watercourse States had contributed to the problem, and the extent to which they would benefit from its solution. The commentary to the article indicated that there was ample precedent for the obligation contained in article 22 in the practice of States and in the work of international organizations.

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21. Article 23 established the fundamental obligation to prevent, reduce and control the pollution of international watercourses. Paragraph 1 contained a definition of the term "pollution", which encompassed all types of pollution, whether or not they resulted in appreciable harm to other watercourse States. In order to preserve the factual character of the definition, paragraph 1 did not refer to any specific "detrimental" effects, such as harm to human health, property or living resources. Paragraph 2 contained examples of such effects that rose to the level of "appreciable harm". The definition required only that there was a detrimental alteration in the composition or quality of the water. It did not refer to the means by which pollution was caused, such as by the "introduction" of substances, energy, etc. into a watercourse. It required only that the "detrimental alteration" resulted from human conduct, an expression understood to include both acts and omissions. The definition did not include "biological" alterations through the introduction of living organisms. Such alterations were generally not regarded as pollution and, therefore, were the subject of a separate article.

22. Paragraph 2 of article 23 set forth the general obligation of watercourse States to prevent, reduce and control pollution of an international watercourse that might cause appreciable harm to watercourse States or to their environment. That provision was a specific application of the general obligation not to cause appreciable harm to other watercourse States (art. 8). Paragraph 3 required watercourse States to enter into consultations if one or more of them should so request, with a view to drawing up lists of substances which, by virtue of their dangerous nature, should be subjected to special regulation. Such substances were principally those that were toxic, permanent or bio-accumulative. The practice of establishing lists of substances whose discharge into international watercourses was prohibited or subject to special regulation had been followed in a number of international agreements and other instruments. States had made the discharge of those substances subject to special régimes because of their particularly dangerous and long-lasting nature. Indeed, the objective of some of the recent agreements dealing with those substances was to eliminate them entirely from watercourses.

23. Turning to article 24, he said that the purpose of that article was to prevent the introduction into a watercourse of alien or new species of flora or fauna which might upset its ecological balance and result in serious problems to watercourse States. Article 24 required watercourse States to take all measures necessary to prevent such introduction. A separate article was necessary to cover that subject, since the definition of "pollution" contained in paragraph 1 of article 22 did not include biological alteration. The objective set forth in article 24 was one of due diligence, and would not be considered as having been breached if a watercourse State had done all that could be reasonably expected to prevent the introduction of alien or new species. The "introduction" that watercourse States were to prevent was one that might have effects detrimental to the ecosystem and might result in appreciable harm to other watercourse States. Finally, the article made it clear that joint action might be called for as well as individual action.

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24. Article 25 addressed the increasingly serious problem of pollution transported into the marine environment by international watercourses. The impact of such pollution was the subject of a number of agreements, including the 1982 United Nations Convention on the Law of the Sea. The obligation set forth in article 25 was separate from, and additional to, those in articles 22 to 24. The obligation of watercourse States to participate in the adoption of such measures was a function of their responsibility for damage to the marine environment or the threat thereof. The expression "marine environment" was understood to include the water, flora and fauna of the sea, and the sea-bed and ocean floor. The phrase "taking into account generally accepted international rules and standards" referred both to rules of general international law and to those derived from international agreements, as well as to standards adopted by States and international organizations pursuant to those agreements.

25. In part V, entitled "Harmful conditions and emergency situations", article 26 dealt with prevention and mitigation of the harmful effects of a variety of situations that might be harmful to watercourse States, including floods, ice floes, drought and water-borne diseases. Watercourse States were required to take measures tailored to the situation involved and reasonable in view of the circumstances of the watercourse. The obligation was that watercourse States should exercise their best efforts to prevent and mitigate such conditions, taking into account their capability in relation to their means of knowing the conditions and their ability to take the necessary measures. The non-exhaustive list of conditions included drought and desertification, which might not seem to fit in with the other problems mentioned, since they were a result of the lack of water rather than its harmful effects. But the effects of a drought could be seriously exacerbated by improper water-management practices. The kinds of measures that could be taken under article 26 ranged from regular and timely exchange of data and information to taking all reasonable steps to ensure that activities in the territory of a watercourse State were conducted so as not to cause conditions harmful to other watercourse States.

26. Article 27 dealt with the obligations of watercourse States to respond to emergency situations related to international watercourses. As defined in paragraph 1, the emergency must cause or imminently threaten serious harm to watercourse States or other States. The seriousness of the harm involved, together with the suddenness of the occurrence, justified the measures required by the article. The situation constituting an emergency must arise suddenly and could result either from natural causes or from human conduct. Paragraph 2 required any watercourse State within whose territory an emergency arose to notify without delay and by the most expeditious means available other potentially affected States and competent international organizations. Non-watercourse States might be affected by an emergency. Competent international organizations were understood to be those competent to participate in responding to the emergency by virtue of their constituent instrument. Paragraph 3 required that all practicable measures as warranted by the circumstances should be taken. As in paragraph 2, paragraph 3 foresaw the possibility of the existence of a competent international organization. Paragraph 4 made reference to the obligation to develop contingency

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plans for responding to emergencies, an obligation including the qualification "when necessary", since the circumstances of some watercourse States and international watercourses might not justify the effort and expense involved in the development of such emergency plans.

27. Substantial progress had been achieved on that topic. Most of the outstanding articles had been referred to the Drafting Committee, with the exception, however, of the major part of annex I, "Implementation of draft articles", an area where, according to paragraph 313 of the report, the Commission would welcome the views of Governments. It could be predicted that at the next General Assembly session, the Sixth Committee would have before it a complete set of draft articles on the law of the non-navigational uses of international watercourses provisionally adopted by the Commission on first reading.

28. Turning to chapter V of the report, "State responsibility", he said that the Commission had examined, at its most recent session, the second report of the Special Rapporteur, on the substantive consequences arising from an international delict, on which three articles had been proposed.

29. The Commission had generally agreed with the differentiation made by the Special Rapporteur between material and non-material, or moral, injuries. On the other hand, the distinction he had drawn between pecuniary compensation and satisfaction had been viewed as too rigid by some members. For them, satisfaction and pecuniary compensation were just two forms of reparation by equivalent, both of which were intended to wipe out the consequences of a wrongful act when restitution in kind was impossible or inadequate. Compensation corresponded to the pecuniary form of reparation by equivalent, and satisfaction, to its non-pecuniary forms.

30. Paragraph 336 of the report reflected the remark of some members that the Special Rapporteur had relied too much on late nineteenth or early twentieth century arbitral decisions and diplomatic practice, which reflected essentially the interests of colonial Powers and did not represent contemporary international law. Paragraph 331 reflected the disagreement of some members with the Special Rapporteur's analysis that all States were on an equal footing in matters of remedy. To them, the formulation of abstract rules on reparation on the assumption that States had equal interests might have undesirable consequences.

31. With regard to the articles proposed by the Special Rapporteur in his second report, he noted that in article 8 on reparation by equivalent, the Special Rapporteur had relied on the dictum of the Permanent Court of International Justice in the Chorzów Factory case, according to which reparation in its broad sense should result in the "wiping out" of all the legal and material consequences of an unlawful act in such a way as to re-establish, in favour of the injured party, the situation that would have existed if the wrongful act had not been committed. In the view of the Special Rapporteur, reparation by equivalent was characterized by three features. First, it could be used to compensate for injuries measurable in economic terms, including moral injury to nationals. Second, it had an essentially compensatory function. Third, its objective was to compensate for all the damage measurable in economic terms, but only for that damage.

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32. The Special Rapporteur was of the view that international law provided an appropriate basis for codification and that the gaps should be filled through the process of progressive development. The Commission generally agreed that the dictum of the Permanent Court of International Justice in the Chorzów Factory case should be the point of departure in formulating the articles on remedies. Some members had, however, noted that the relationship between article 7 and article 8 was not brought out clearly and that the scope of article 8 was imprecise.

33. In relation to paragraph 1, it had been pointed out that full account did not seem to have been taken of the definition of the term "injured State", as contained in article 5 of part two. Reference had been made in that context to violations of human rights treaties and to damage to the environment. In the view of some members, paragraph 1 did not take the time factor - namely, the time when damage should be assessed - into account.

34. With regard to paragraph 2, some members had felt that the criterion of economically assessable damage was not sufficiently clear. Others had observed that in many instances international tribunals had been guided by municipal legal systems under which damage was assessed, in the case of property, on the basis of the market value at the time of the damage or loss or, if that was not possible, on the basis of the intrinsic value and, in the case of personal injury, on the basis of the age and the family and financial situation of the injured person. Other members of the Commission had held that the criterion of economically assessable damage was too subjective. Still other members had felt that the financial status of the offending State should also be taken into account. In their view, that approach was consistent with the concept of "excessive onerousness" introduced in article 7 on restitution. The Special Rapporteur had agreed that the criterion should be studied further. In paragraph 2 of article 8, pecuniary compensation for moral damage sustained by nationals of an injured State was also envisaged. Some members had expressed reservations in that respect since in their view there was no uniformity in respect of compensation awarded by arbitral tribunals for unlawful arrest or imprisonment or for grief and indignity. Other members had felt that envisaging compensation for moral injury was not compatible with the premise underlying article 8, namely that the injury should be economically assessable. They had suggested that moral injury sustained by the nationals of an injured State should be dealt with in article 10 on satisfaction, in which the possibility of punitive or nominal damages was contemplated.

35. With regard to paragraph 3 of article 8, he said that in general the members had agreed that lost profits should be compensated but had found the reference to "any" profits lost as a result of an international wrongful act much too broad.

36. Paragraph 4 of article 8 dealt with the casual link between a wrongful act and an injury. Under the proposed text, that link should be "uninterrupted". The Special Rapporteur had expressed preference for the criterion of casual link, which, in his view, should operate in the following manner: (a) damages should be fully paid in respect of injuries that had been caused immediately and exclusively by the wrongful act; and (b) damages should be fully paid in respect of injuries

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for which a wrongful act was the exclusive cause even though they might have been linked to that act not by an immediate relationship but by a series of events, each directly linked to the other by a casual link. Some members had also felt that the issue of casuality could not be reduced to a mere question of fact; to some extent, the responsibility of the injured State had to be taken into account.

37. Paragraph 5 of article 8, in which the possibility that damage might be partly due to causes other than an internationally wrongful act, including the negligence of the injured State, was envisaged, had met with wide support in the Commission.

38. Article 9 reflected the idea that full compensation and the wiping out of all the consequences of a wrongful act required that interest should be paid on the amount awarded as principal. While that idea found general support in juridical literature and in State practice, there was no consistency of views on the date from which interest should run, nor on the interest rate. The same lack of consistency had been apparent in the Commission although the general thrust of the article had generally been supported. Some members had felt that the level of economic development of the States concerned should be taken into account. With regard to compound interest, which was dealt with in paragraph 2, most members had felt that the paragraph should be deleted. Many members had favoured the deletion of all of article 9.

39. With regard to article 10, the Special Rapporteur had relied largely on State practice, and particularly on diplomatic practice, which appeared to indicate that satisfaction had frequently been provided as an autonomous remedy. Satisfaction could take various forms, such as expression of regrets, punishment of the responsible person, guarantees against repetition, salute to the flag or payment of a symbolic sum. Judicial decisions explicitly granting satisfaction were rare, but there was a considerable body of diplomatic practice recognizing satisfaction as a remedy. In the view of the Special Rapporteur, satisfaction was characterized by its retributive or punitive nature. It was generally agreed in the Commission that satisfaction constituted a specific remedy distinct from restitution in kind and pecuniary compensation. Some members had found the Special Rapporteur's approach too narrow. In their view, the purpose of satisfaction was not only to provide a remedy, but to restate the rule of national law that had been violated. Many members had noted that the Special Rapporteur had ascribed a punitive function to satisfaction, and that such an approach was incompatible with the sovereign equality of States. Some members had found the reference to "moral or legal injury" too broad, because the concept of "legal injury", as defined by the Special Rapporteur, included the infringement of the State's rights per se, independently from the infringement of the State's dignity, honour and prestige. Hence, by definition, legal injury existed in any wrongful act and, consequently, satisfaction would have to be granted for every single breach. In their view, such an approach was impractical. Some members had also felt that the reference to "nominal or punitive damages" should be deleted because it was theoretically incompatible with the assumption on the basis of which the article on satisfaction had been formulated, namely, that satisfaction was granted for injuries not economically assessable.

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40. In the last part of his report, the Special Rapporteur dealt with the impact of fault on the forms and degrees of reparation. In the view of the Special Rapporteur, the draft articles could not ignore the importance of the role that fault played in the determination of the specific consequences of an internationally wrongful act, particularly as part two was intended to cover the consequences of international crimes and delicts. The report defined fault as wilful intent or negligence of the offending State, and raised two issues: whether fault should play any role in the determination of the consequences of a wrongful act, and how it could be attributed to a State. The Special Rapporteur felt that the first question called for a policy decision. In his view, it was logical and rational that the presence of fault and the extent of wilful intent or negligence should play some role in the assessment of responsibility and the determination of the consequences. Regarding the second issue, namely, how fault could be attributed to a State, the Special Rapporteur considered that it was a factual question that should be left to international tribunals and courts. At the end of the debate, the Commission had decided to refer articles 8, 9 and 10 to the Drafting Committee, which already had pending before it articles 6 and 7.

41. With regard to chapter VI of the report, which dealt with relations between States and international organizations, substantive progress had been achieved, as evidenced by the fact that 11 draft articles had been referred to the Drafting Committee. Although some reservations had been expressed about the future of the topic, the majority of the Commission's members had favoured the continuation of the work in accordance with the General Assembly's request, and had placed emphasis on the desirability of putting some order in the law governing international organizations.

42. The report referred to the suggestion that the definition of an "international organization" should make it clear that the "universal" character of an organization derived from the fact that membership was open to all States, and not from the actual number of States. That suggestion had been well received, as had the suggestion that the definition of the words "relevant rules of the organization" should be harmonized with the corresponding definitions in instruments such as the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations.

43. With regard to draft article 2, several members had agreed with the Special Rapporteur's approach of focusing, in principle, on international organizations of a universal character, without prejudice to the possibility of encompassing, at a later stage, other organizations, such as regional organizations.

44. Articles 5 and 6 had elicited two comments of a methodological nature. The first had been that the current wording of the articles did not distinguish clearly between the legal personality of the organization under international law and its legal personality under the internal law of its member States and the host country. The second comment had been that, although the capacity of an international organization to conclude treaties was expressly provided for in the draft articles, other legal consequences deriving from the international legal

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personality of an organization were not. It had been suggested to devote one article to the international legal personality of an organization and the legal powers deriving from it at the international level, and another article to the legal personality of an organization under internal law.

45. Concerning article 7, one member had said that immunity from jurisdiction was not a functional necessity for all international organizations of a universal character, and that even where it was, care should be taken not to endow international organizations with a greater degree of immunity than was enjoyed by member States. Other members, however, had supported the draft article, and pointed out that the tendency to restrict the jurisdictional immunities of States should not be extended to international organizations. They had observed that the concept of absolute immunity of the property, funds and assets of international organizations was embodied in the 1946 Convention on the Privileges and Immunities of the United Nations and the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, as well as in many constituent instruments of international organizations and headquarters agreements, justifiably so because the immunity from jurisdiction enjoyed by international organizations was intended to protect the interests of their membership, which could, in the particular case of organizations of a universal character, encompass most of the members of the international community. They had added that to apply the criterion of functional necessity to the immunity of organizations would be an error, since immunity was a legal means of guaranteeing the unhampered fulfilment of the purposes of the organization, whatever their nature or extent.

46. Article 8 had been generally supported by the members of the Commission, although it had been suggested that it should reflect not only the duty to refrain from certain acts so as to respect the inviolability of the premises of an organization, but also the active duty to protect those premises against any disturbance. The second sentence of paragraph 1, providing for the immunity from expropriation of the property, funds and assets of an international organization, had been supported by some members, but others had wondered whether it reflected the current state of international law.

47. Article 9 had been supported by several members, who had viewed it as consonant with the functional approach to privileges and immunities, but in the opinion of others, the article was not only unnecessary, the functional nature of privileges and immunities having been established in other articles, but also harmful, because it ruled out the possibility for an organization to grant refuge for the protection of fundamental human rights, such as the right to life or physical integrity.

48. Some members of the Commission had taken the view that reference should be made in article 10 to the functional criterion and to provisions of headquarters agreements. Other members, however, had noted that the article was modelled on a provision of the 1946 Convention on the Privileges and Immunities of the United Nations, and therefore had viewed it as acceptable.

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49. Article 11 had been criticized by some, who had found it unnecessary or who had feared that, in its present wording, it might introduce confusion in the interpretation of article 10.

50. Turning to chapter VII of the report, on international liability for injurious consequences arising out of acts not prohibited by international law, he said that the Commission had had before it the sixth report of the Special Rapporteur (A/CN.4/428 and Corr.1 to 4 and Add.1), which proposed an outline of a set of draft articles. In addition, the sixth report examined the extent to which activities involving risk and activities involving harm should be treated separately, and explored the possibility of more precisely defining the concept of activities involving risk through the introduction of a list of dangerous substances. In its last part, the report presented the Special Rapporteur's preliminary views on the question whether the topic should encompass harm to areas beyond national jurisdiction of States, the so-called "global commons". The report also raised some complex policy and technical issues, which the Commission had decided, at the request of many members, to examine at its next session.

51. On the issue of the general approach and scope of the topic of chapter VII, he said that the Commission had discussed the question of whether activities involving risk and activities involving harm should be treated separately. In the Special Rapporteur's view, the answer to the question depended largely on the main purpose of the legal régime to which the activities concerned were to be subjected: whether to prevent harm or to secure compensation for injurious consequences. The Special Rapporteur had felt, however, that if prevention was taken in a broad sense, encompassing both measures aimed at averting accidents and ex post facto measures seeking to mitigate transboundary harm, then it would perhaps be more appropriate to treat together activities involving risk and activities involving harm, it being understood that obligations concerning measures to be taken in order to mitigate harm would rank higher than the obligations relating to the taking of preventive measures. Most members of the Commission had agreed with the Special Rapporteur's conclusions on that point, as well as with his broad approach to the concept of prevention. Some, however, had felt that subjecting the two types of activities to a single régime appeared to narrow the scope of the topic. They had therefore preferred that they should be given separate treatment. A few other members had insisted that the future draft should be built on the concept of risk alone.

52. As for the possibility of clarifying the scope of the topic by annexing to the future draft a list of inherently dangerous substances, three main trends had emerged. According to one, the proposed list would be useful since it would, by giving examples of dangerous substances, clarify the concept of dangerous activities. According to other members, the whole purpose of a list of activities or of substances was to enable States to know in exactly which cases they had to comply with the obligations set forth in the draft, and an illustrative list would be of no use in that respect. Finally, according to others, a list, whether exhaustive or not, would narrow the scope of the topic, and would also shift the emphasis from liability for activities causing harm to liability for activities involving risk.

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53. At its forty-first session, the Commission had decided to refer to the Drafting Committee nine of the 10 articles comprising chapters I and II of the outline of draft articles proposed by the Special Rapporteur. Nevertheless, in view of the ideas put forward by the Special Rapporteur in his sixth report, some of those articles had to be reviewed, among them article 2, which was too long and complex.

54. In chapter II of the outline, he wished to single out article 10, which was an essential element of the system of civil liability envisaged in chapter V. It had elicited a positive reaction in the Commission, even though some members had wondered whether such a provision would prove acceptable in a global convention, and had drawn attention to the problems which could surface as a result of the considerable diversity of domestic laws dealing with damage caused by activities of the type under consideration.

55. With regard to chapter III of the proposed outline, he said that the participation of international organizations, in particular through the provision of assistance to developing countries, had generally been welcomed. Some members had observed, however, that international organizations could not operate outside their mandate, and had questioned whether they could get involved in the type of issues under consideration. Article 20 had been generally well received, but views had differed as to its practical implementation. Some members had felt that it should be couched in stronger terms; according to them, once it became clear that an activity would cause serious and irreversible transboundary harm, there should be no hesitation in requiring its prohibition until the necessary preventive measures were taken.

56. Chapter IV of the proposed outline dealt with liability in cases of transboundary harm, regardless of any preventive measures which the State of origin might have taken, such measures being, however, given due regard in the calculation of the amount of compensation. The function of chapter IV, in the Special Rapporteur's view, was to provide guidelines for States in negotiating a régime in respect of an activity falling within the purview of the future draft, and also to provide a safety net to protect the affected State in the absence of such a régime.

57. Many members had viewed chapter IV as the core of the future draft. Two aspects had been considered to be of particular importance: the indemnification of the victims of transboundary harm, and the determination of the liable party. With regard to the first point, it had been suggested that the chapter should clearly enunciate an obligation to pay compensation, rather than an obligation to negotiate compensation. Yet, some members had questioned the existence in present international law of an obligation of reparation in the absence of any breach of international law. Although accepting that such an obligation could be envisaged, they had stressed that that could be a considerable innovation. With regard to the second point, some members had disagreed with the view that the State of origin should be held primarily liable; others had felt that the State should be held primarily liable because it alone could ensure that activities conducted in its territory did not cause harm to other States. Still other members had felt that

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States should bear some liability for activities within their territories with extraterritorial effects.

58. In chapter V of the proposed outline, the Special Rapporteur had borne in mind that affected individuals might wish, or be left with no alternative but to bring claims before the courts of the State of origin. Consequently, the articles contained in chapter V were intended to ensure a minimum of consistency in the treatment of such claims by domestic courts. It should also be noted that those provisions were partly inspired by articles 3 and 14 of the Convention on Third Party Liability in the Field of Nuclear Energy. Chapter V had elicited positive reactions in the Commission, but had also been criticized as relying on an unsuitable precedent - that of the Convention on International Liability for Damage Caused by Space Objects. Other members had held the view that liability should fall on the operator, rather than on the State of origin.

59. The last part of the Special Rapporteur's sixth report was devoted to the question of harm to the "global commons". The Special Rapporteur had explored the possibility of dealing with the question either in the framework of the topic as it stood or in that of State responsibility for wrongful acts. He had found that if the concept of liability as formulated under the topic as it stood were to be applied to harm to the "global commons", a different definition of harm and a different threshold of harm would be required, and the identification of injured States would also pose a special problem, since harm to the "global commons" did not necessarily have consequences on States, their nationals or their property. The Special Rapporteur had noted, however, that a review of State practice seemed to indicate that where harm to the "global commons" was concerned, States had been dealing with the problem of identifying specific harmful substances or areas of the "global commons", and making them subject to certain regulations, such as those restricting or banning the use of certain substances or prohibiting any activity which might cause harm to the "global commons". The Special Rapporteur had concluded that the trend indicated that the problem was being confronted in the context of State responsibility for wrongful acts, and that that approach had some advantages. It had not been possible to discuss that part of the Special Rapporteur's report extensively during the most recent session of the Commission, owing to lack of time, but some members of the Commission had encouraged the Special Rapporteur to continue his work with regard to the issue. In that connection, he reminded the members of the Sixth Committee of two policy questions concerning which the views of Governments were requested in paragraph 531 of the report.

60. The last chapter of the report was concerned with item 9 of the Commission's agenda. With regard to the planning of activities, the Commission expected to submit to the General Assembly at its forty-sixth session a complete set of draft articles on jurisdictional immunities of States and their property, thereby attaining the goal of concluding the second reading of the draft before the end of the current term of office of its members. The Commission intended to give priority to two topics, the draft Code of Crimes against the Peace and Security of Mankind, and the law of the non-navigational uses of international watercourses,

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with a view to completing the first reading of the draft articles on both topics at its forty-third session.

61. As for the future programme of work, he drew the Committee's attention to the results achieved by the Working Group established in 1989, as summarized in footnote 325 of the report, and to the Commission's decision to devote some time in 1991 to a review of its long-term programme of work, with a view to formulating appropriate recommendations.

62. After pointing out that the rest of the report was self-explanatory, he emphasized the relevance of the United Nations Decade of International Law to the process of codification and progressive development of international law. He trusted that the recommendations being formulated by the Working Group established by the Sixth Committee under General Assembly resolution 44/23 would take account of the contribution which the Commission should make to the success of the Decade.

63. Mr. MAWHINNEY (Canada), after associating himself with the tribute paid to Professor Paul Reuter, said that the law of the non-navigational uses of international watercourses was a subject of considerable importance to his country and to all mankind, since the demand on fresh-water supplies was increasing while the water supply itself was tending to diminish. It was important, therefore, that the international community should take measures immediately to ensure water supplies for future generations. His delegation wished to reiterate its view that the work of the Commission with regard to water supply should be aimed at the formulation of a legally binding instrument, even if it were made up of general and residual rules. The urgency of the situation indicated that the time for action had come. His delegation believed that the mandate of the Commission should be clarified, if necessary, in order to remove any doubt as to what was expected of it.

64. Turning to the Special Rapporteur's report, he noted that draft article 24 seemed to reflect the changes which had occurred over the past century. Since navigation was no longer the main use of watercourses by States, his delegation felt that the Special Rapporteur was justified in stating clearly that no use should have priority and that the only priority should be the prevention of damage to the environment.

65. With regard to draft article 25, his delegation was of the view that it would be desirable to clarify the meaning of the word "regulation", whether through a formal definition or by specifying its precise object, for example, "regulation of the flow of water". With regard to paragraph 2 of the same article, the Commission should consider other means of giving effect to the obligation to co-operate, such as through bilateral, regional or international organizations, in order to accommodate those situations where political realities did not allow for direct co-operation between States.

66. Canada felt that most delegations would agree that, of the new draft articles proposed by the Special Rapporteur, article 26 was the one most likely to give rise

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to further debate. Although there was no obligation under international law to set up joint management of international watercourses, such a requirement would seem to be the logical conclusion for the most efficient fulfilment of those obligations provided for in draft articles 6, 8, 9 and 10 and part III. In the view of his delegation, such an interpretation was consistent with a clear international trend towards the establishment of joint organs to manage international watercourses, as Canada and the United States of America had done in creating the Canada/United States International Commission. As repeatedly stated by the Special Rapporteur, such joint management should perhaps not be restricted to States directly affected, such as watercourse States. Since environmental concerns extended well beyond the area of national jurisdiction and affected other States, it appeared highly desirable to involve all other States which might have an interest in the activities provided for. However, the relationship between members of future joint management committees should be based on consultations, since the establishment of a set of obligations and legally binding decisions by committees could deter States from becoming parties to the future instrument.

67. With regard to draft article 27, he emphasized the need to reinforce the protection of international watercourses and related installations. As presently worded, the draft article merely called on States to enter into "consultation" with a view to concluding agreements or arrangements concerning safety standards and security measures for the protection of international watercourses and related installations. In the view of his delegation, the duty of watercourse States to do all that was possible to maintain and protect international watercourses and related installations, facilities and other works from natural hazards and risks or from wilful or negligent acts should be clearly established.

68. His delegation was in favour of entrusting the study of the subject dealt with in article 28 to the Commission. In view of the complexity of the issue, especially when it came to the meaning of the term "inviolable", his delegation favoured the inclusion in the core of the article of a reference to the rules of international law governing armed conflicts. In the same vein, his delegation was of the view that consideration should be given to the possibility of dividing the article into two parts, one on peaceful uses and the other on armed conflicts.

69. With regard to annex I, his delegation's only observation related to the need for consistency in the use of terms, and the importance of defining them in the article on use of terms. Different expressions, such as "appreciable harm", "adverse effects", and "any harm ... or ... any environmental degradation" might refer to specific standards in the minds of the drafters, and, if so, should be made clear.

The meeting rose at 1 p.m.